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Contingent liability reserve for the United Nations Postal Administration**

Report of the Secretary-General

Summary

The present report is submitted pursuant to section XIV of General Assembly resolution 62/238 and the related observations and recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report (A/62/350) on the report of the Secretary-General on the contingent liability reserve for the United Nations Postal Administration (A/61/900).

In the present report the Secretary-General provides an update on the measures taken as an alternative to the establishment of a contingent liability reserve to eliminate risks posed to the United Nations Postal Administration by mass mailing.

* A/63/150 and Corr.1

** The submission of the present report was delayed owing to the need for extensive consultations required among various offices concerned, including those located away from Headquarters.

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I. Introduction

1. The United Nations Postal Administration (UNPA) was established by the General Assembly in its resolution 454 (V). A primary objective in creating the UNPA was the promotion of the aims and activities of the United Nations through the issuance of United Nations postage stamps.

2. United Nations postage stamps can be posted only at the three issuing stations, New York, Vienna and Geneva. Stamps are issued in denominations of United States dollars, Swiss francs and euros. The agreements with the postal authorities of the United States of America, Switzerland and Austria state that the respective post offices would be reimbursed for mailing charges for United Nations stamps. Mail received by the United Nations at the respective issuing stations is forwarded to the national postal authorities for mailing. UNPA then reimburses the postal administrations for the mailing charges.

3. Based on available data, it is estimated that approximately 12 per cent of overall stamp sales have been presented for mailing and 88 per cent of stamps are outstanding and have never been mailed. It is assumed that they are held by collectors. These stamps constitute a contingent liability inasmuch as there is the theoretical possibility that such stamps could be presented for mailing at any time at UNPA post offices. No provision has been made to cover such liability.

4. In earlier reports on this subject (A/61/295 and A/61/900), the Secretary-General requested approval for the establishment of a reserve for contingent liability for postal services for previously issued UNPA stamps and approval as an exception to regulation 3.14 and rule 103.7 of the Financial Regulations and Rules of the United Nations, for the funding of the reserve by transferring the balance of net income of postal services to the reserve until a ceiling level of $3.3 million has been reached.

5. This recommendation is in line with recommendations contained in the report of the Board of Auditors (A/61/5 (Vol. I), para. 477), in which the Board suggested that UNPA consider setting up a contingency reserve from sales revenue to cover the mailing charges of pre-sold United Nations stamps in the event that customers might use the stamps in the future.

II. Update on the previous report of the Secretary-General

6. As indicated in earlier reports, it is evident that the majority of individual collectors who have bought United Nations stamps will not use the stamps in their collections for mailing since most collectors are not located near UNPA offices. The only use for previously issued UNPA stamps that could pose a risk to the operations of UNPA are mailings by bulk mailers presenting items to the United Nations using United Nations stamps purchased on the open market. Many previously issued United Nations stamps have no collection value and therefore can be purchased significantly below their issuance value. Some of these stamps are now sold off as collectors have stopped collecting. In the past, some philatelic companies have used such stamps to mail their catalogues and magazines by presenting them to the UNPA post office for mailing.

7. As indicated in the earlier report of the Secretary-General, the introduction of the euro in 2002 and the limited exchange of Austrian schilling-denominated stamps for one year eliminated the possibility of previously issued United Nations stamps being used for bulk mailing in Austria as UNPA no longer accepts mail using schilling-denominated stamps. Since UNPA also reduced the overall volume of stamps produced and sold on the open market, euro-denominated stamps are not sold on the secondary market at a discount. As a result, bulk mailing using such stamps is not economical. Similarly in Geneva, bulk mailing has been eliminated following discussions with the Swiss postal authority. The Swiss authorities advised UNPA that they no longer accept external commercial mail under their agreement with the United Nations.

8. In New York, effective 1 September 2007, UNPA put in place a new stringent policy that restricts large consignments of mail, specialized mail services and mass mail. This policy eliminated bulk mail charges while maintaining mail services for philatelic services as outlined in the United Nations agreement with the United States Postal Service. Since 1 September 2007 no bulk mail has been presented to UNPA for posting. The effect of the implementation of this policy has been a continuing reduction in the estimate of the contingent liability for stamps sold in prior periods being presented for posting in the current period.

9. The elimination of bulk mail also had positive effects on the profitability of the UNPA operations, which reported a net profit of $1.5 million for the biennium 2006-2007.

10. In line with the recommendation by the Advisory Committee on Administrative and Budgetary Questions in its related report (A/62/350), the Secretary-General continued his efforts to obtain discounts for first-class mail for its New York-based operations. However, the mail volume produced by the United Nations Mail Operations, including the UNPA volume, does not meet minimum requirements for discounts offered by the United States Postal Service. Furthermore, such discounts require pre-sorting and other pre-mailing preparations that are not feasible for most of UNPA remaining mail, which consists of an assortment of various envelope sizes and postcards.

III. Conclusion and recommendations

11. In his previous report (A/61/900), the Secretary-General proposed establishing a reserve for contingent liabilities for postal services in the amount of $3.3 million. Further to the actions taken by the Secretary-General in response to the request by the General Assembly in its resolution 62/238 to eliminate risks posed by mass mailing as an alternative to establishing a contingent liability reserve, the Secretary-General advises that all possible measures have now been implemented.

12. With the implementation of the policy to restrict large consignments of mail, specialized services and mass mail and the related decrease in postal charges, and therefore the related decrease in the liability, the Secretary-General recommends that a reserve not be established at this time and that the existing practice be continued, which involves meeting from current income any additional expenditure incurred for postage from sales recorded in prior periods. Until a trend emerges from the implementation of the new policy, it would not be possible to determine with accuracy the appropriate level of contingent liability. Once a trend is

established, UNPA will estimate the new level of contingent liability in coordination with the Office for Programme Planning, Budget and Accounts, which will then be brought to the attention of the General Assembly.

13. As stated in the earlier reports, the United Nations system accounting standards require that contingent liabilities be disclosed in the financial statements. While there continue to be difficulties in estimating the value of the UNPA contingent liability for stamps that have been sold and will be presented for mailing in the future, the Secretary-General does disclose the nature of the contingent liability with respect to UNPA operations in the footnotes to schedule 5.1 of the United Nations financial statements. The footnote included in schedule 5.1 of A/63/5 (Vol. I) is as follows: "Contingent liability. Stamps sold are included in revenues, but could be presented for use in a future period. During 2007 UNPA put in place further measures that would restrict such usage by bulk mailers, which would reduce the potential liability of the United Nations. Earlier estimates of the Organization's contingent liability were approximately $3.3 million. In view of the measures taken in 2007, at present it is not possible to reasonably quantify the extent of such a contingent liability as at 31 December 2007".

IV. Action to be taken by the General Assembly

14. The General Assembly may wish to take note of the present report.

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Sixty-third session
Item 42 of the provisional agenda*
Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions

Assistance to refugees, returnees and displaced persons in Africa (covering the period 1 January 2007-15 June 2008)

Report of the Secretary-General

Summary

The present report is submitted in compliance with General Assembly resolution 62/125 on assistance to refugees, returnees and displaced persons in Africa and draws on information received from a number of United Nations organizations. It updates the information contained in the report of the Secretary-General submitted to the Assembly at its sixty-second session (A/62/316) and contains an overview of regional developments across the continent as well as information on specific areas of inter-agency cooperation. The period covered is 2007 and the first half of 2008.

* A/63/150 and Corr.1.

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I. Introduction

1. Displacement by armed conflict and other situations of violence[1] in Africa[2] increased during 2007, with the total number of uprooted people growing by approximately 1 million. At the end of 2007, the total population of concern to the Office of the United Nations High Commissioner for Refugees (UNHCR) stood at 15.2 million, with internally displaced persons (IDPs) outnumbering refugees by a wide margin. The estimated 12.7 million IDPs in Africa make up almost half the worldwide total. African nations hosted 2.3 million refugees in 2007, continuing the trend of decreasing numbers observed since 2001.

2. Underlying these broad trends are both the significant progress made in achieving durable solutions and the impact of several new population movements across the continent. During the reporting period, more than 2 million displaced people[3] found solutions to their plight. This was largely a result of the consolidation of peace and stability in some countries of origin, but is also due to the generosity of various African States that offered local integration, and of countries elsewhere in the world that provided resettlement opportunities. In 2007, an estimated 300,000 refugees and 1.7 million IDPs made the decisive step of returning home, often after years of exile. Their joy was frequently tempered, however, by the difficulties of reintegrating in communities affected by conflict. Significant progress was made in the local integration of residual refugee groups in Central, Southern and West Africa. For some 19,000 refugees across the continent, third-country resettlement provided the most appropriate long-term solution.

3. At the same time, conflict in the north of the Central African Republic, Chad, North Kivu Province of the Democratic Republic of the Congo, Somalia and the Darfur region of the Sudan caused new displacement within and across international borders and exacerbated already dire humanitarian situations. Providing assistance and protection was challenging, frequently dangerous and yet vital for millions of people[4] fleeing insecurity, political unrest and persecution.

4. African countries continued to require the bulk of international funding for humanitarian emergencies and operations. Between January 2007 and July 2008, just over 5.5 billion United States dollars (US$) was received for humanitarian activities in Africa identified in 36 inter-agency appeals of the United Nations and partners. The majority of those appeals were for activities benefiting displaced people. The Central Emergency Response Fund contributed to ensuring a more predictable response to emergencies, including grants for Africa of over $398 million against global disbursements of $613 million. In addition, several donors continued to pool humanitarian resources for the Sudan and the Democratic Republic of the Congo, giving the humanitarian coordinators in those countries a

[1] In addition to conflict-related displaced persons, there are significant numbers of persons displaced by natural disasters who receive assistance and protection from Governments with the support of the international community.

[2] In the present report, Africa refers to sub-Saharan Africa.

[3] Statistics on refugees, asylum-seekers and returnees usually refer to UNHCR statistics as of January 2008, unless otherwise specified. Statistics on IDPs and returned IDPs are estimates provided by UNOCHA and the Internal Displacement Monitoring Centre (IMDC) "Global Overview of Trends and Developments in 2007" report. Statistics are provisional and subject to change.

[4] Displaced persons comprise IDPs, refugees and asylum-seekers.

strategic funding mechanism to ensure early support for critical activities. United Nations entities and non-governmental organizations (NGOs) received significant funding through emergency response funds in the Central African Republic, the Democratic Republic of the Congo, Somalia, the Sudan and Zimbabwe.

II. Regional overviews

A. East Africa and the Horn of Africa

5. East Africa and the Horn of Africa were hard hit by conflict and natural disasters, particularly Ethiopia, Kenya, Somalia and the Sudan, resulting in additional population displacements. Overall, the number of refugees in this region increased by 15 per cent in 2007 despite improvements in Southern Sudan that allowed a significant number of refugees and IDPs to return.

The Sudan

6. The Sudan is the scene of the largest humanitarian operation in Africa, including the biggest IDP crisis (5.8 million persons) and refugee repatriation operation. The Sudan was also the largest refugee-producing country in 2007 (523,000 refugees) on the continent.

7. Darfur remained in a state of humanitarian emergency as a result of unabated violence and deteriorating security. New displacement occurred within Darfur and into neighbouring Chad and the Central African Republic. The estimated 4.2 million people living in Darfur have been affected by the conflict, including more than 2.5 million who are displaced. Despite a massive presence of aid agencies, insecurity, including increasing numbers of incidents targeting humanitarian workers, and restrictions on humanitarian access and space impeded efforts to deliver assistance. Although the United Nations-African Union Hybrid Mission in Darfur was in place by the end of 2007, it lacked equipment and sufficient personnel to implement effectively its mandate to protect civilians.

8. Southern Sudan has moved slowly towards recovery following the milestone 2005 peace agreement and the deployment of a peace-support operation. Between 2005 and the end of 2007, some 202,200 refugees went home from neighbouring countries and 1.6 million IDPs returned or settled elsewhere throughout the Sudan. Strong recovery and development-oriented assistance is critical at this juncture to secure the fragile peace and build governmental, social and economic infrastructure needed to sustain returns. Another challenge is the need to address serious political issues ahead of the 2009 elections and the 2011 referendum, including the contested area of Abyei, where recent violent clashes resulted in the displacement of some 50,000 civilians.

9. Although Eastern Sudan remained relatively stable, it suffers from chronic underdevelopment and food insecurity. This region continued to receive asylum-seekers, mainly from Eritrea, Ethiopia and Somalia. More than 15,000 new arrivals have been recorded since early 2007. Livelihood opportunities remain insufficient and living conditions in camps are substandard, particularly in the sanitation sector, where less than 25 per cent of the population has access to latrines.

Somalia

10. Continued conflict in south and central Somalia has caused massive displacement of populations in and around Mogadishu, leaving hundreds of thousands of Somalis in a state of desperate need. In the reporting period, the IDP population rose from 450,000 to approximately 1.1 million people. Humanitarian indicators are at alarming levels as IDPs have very limited and sporadic access to life-sustaining assistance. Only 29 per cent of the population use improved drinking water sources.[5] Constant fighting between the Transitional Federal Government and the insurgents of the Union of Islamic Courts and Al Shabab, the abduction and killing of humanitarian workers, border closures, piracy along the Somali coast, and inter-clan fighting have rendered the delivery of humanitarian aid almost impossible.

Ethiopia

11. Clashes in the Ogaden region, coupled with drought, floods and food insecurity in southern Ethiopia, triggered the internal displacement of thousands of Ethiopians. International organizations estimate that there are currently some 200,000 conflict-induced IDPs, living mainly in Somali, Oromiya, Gambella and Tigray regional States.

12. Ethiopia continued to host tens of thousands refugees from Eritrea, Somalia and Southern Sudan. New refugee camps were opened to accommodate the growing number of asylum-seekers, including more than 29,200 Somalis and 12,600 Eritreans over the past 18 months, according to Government statistics. Southern Sudanese refugees returned home in significant numbers, with over 35,600 individuals having departed since the repatriation operation started in 2006. Progress on repatriation has allowed the closure of three camps and increased focus on rehabilitation activities in refugee-hosting areas.

Kenya

13. Post-election violence that erupted in late 2007 led to the displacement of between 350,000 and 500,000 people to camps and host communities, especially in the Rift Valley. In addition, some 12,000 Kenyans sought refuge in Uganda. The situation has improved considerably following a power-sharing agreement in February between the Government and the opposition. Since then, almost 280,000 people have spontaneously returned to their homes. The challenge is now to find solutions for those who remain displaced. The vast majority of Kenyans who fled to neighbouring Uganda have so far decided to remain there.

14. With over 265,000 refugees originating mainly from Somalia and Southern Sudan, Kenya remained one of the largest refugee-hosting countries in Africa. The Government's decision in January 2007 to close the Kenya-Somalia border has kept out Somalis in need of international protection. Nevertheless, some 18,000 asylum-seekers managed to cross into Kenya in 2007 and were placed in increasingly crowded refugee camps.

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[5] Millennium Development Goal 7 plans to halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation.

Uganda

15. Southern Sudanese refugees in Uganda showed strong interest in returning home. Between January and June 2008, some 41,000 Sudanese were assisted to repatriate. Furthermore, a verification exercise in refugee settlements revealed that an additional 60,000 Sudanese refugees had left and most probably repatriated spontaneously. As a result, the number of registered refugees in Uganda dropped from 217,000 in early 2007 to 132,000 in June 2008. Refugees from other countries continued to enjoy asylum in Uganda, which received influxes from the neighbouring Democratic Republic of the Congo in 2007 and from Kenya in early 2008.

16. The consolidation of security, the lifting of restrictions on freedom of movement and ongoing development efforts in northern Uganda allowed over 1.1 million IDPs to begin returning and re-establishing their livelihoods. By March 2008, some 741,000 had returned to their villages of origin and 373,000 had moved to transit areas closer to their places of origin. Approximately 700,000 IDPs remain in camps in Uganda.

B. Central Africa and the Great Lakes region

17. Political stability has remained a distant prospect for the Central Africa and Great Lakes subregions. Deteriorating security in parts of the Central African Republic, Chad and the Democratic Republic of the Congo caused more suffering and displacement of populations already severely affected by poverty and conflict. On a positive note, progress in achieving durable solutions for refugees in the camps in the north-west of the United Republic of Tanzania has led to a decrease in the refugee population from 285,000 to 160,000 in the last 18 months and to the closure of seven camps.

Burundi

18. While clashes between Government forces and rebel groups continued in north-western Burundi, at times limiting humanitarian access, the recent return of the leader of the Forces nationales de libération (FNL) and the start of the cantonment process of FNL troops give hope for further stabilization of the country.

19. Refugees continued to repatriate to Burundi, almost exclusively from the United Republic of Tanzania. Since January 2007, almost 80,000 refugees have gone home, benefiting from additional support in the form of cash grants introduced to facilitate their reintegration. The voluntary repatriation of Burundian refugees who have lived self-sufficiently in settlements in the United Republic of Tanzania since the 1970s started in March 2008.

20. Despite donor support for post-conflict recovery programmes, the reintegration process has remained fragile in Burundi, which ranks among the 10 poorest countries in the world.[6] Limited access to livelihood opportunities and conflict over the distribution of scarce land, particularly for returnees who had left Burundi in the 1970s, are some of the major challenges.

[6] United Nations Development Programme, *Human Development Report 2007/2008* (New York, 2007), Human Development Index.

Central African Republic

21. Fighting between Government forces and irregular armed groups, combined with widespread banditry, has severely affected civilians in the north of the Central African Republic, where populations have been subject to human rights abuses, including sexual and gender-based violence, forced recruitment, kidnapping and looting of property. The number of IDPs rose to 197,000 and tens of thousands of civilians sought asylum in neighbouring Chad, Cameroon and the Sudan. The total number of Central African refugees now stands at 104,000.

22. The increased presence of humanitarian actors may have contributed to a decline in rebel and army reprisals against civilians observed since mid-2007. This trend, along with the recent signature of a peace agreement, nurtures hope for the resumption of economic activity and for the return of IDPs and refugees, should insecurity be brought under control.

Chad

23. The situation in eastern Chad has worsened markedly along the volatile border with Darfur where cross-border movements of armed groups, militia clashes, acts of banditry and general impunity affected the safety and security of 250,000 refugees from Darfur, 186,000 Chadian IDPs and the host communities. The presence of armed elements in and around refugee camps and IDP sites, forced recruitment of adults and children, incidents of sexual and gender-based violence, food insecurity, malnutrition and poverty are all pressing humanitarian concerns. Compounding this situation, the depletion of natural resources continued to be a serious source of tension between displaced populations and local communities.

24. Owing to insecurity and violence against humanitarian workers, humanitarian activities had to be suspended several times, jeopardizing the provision of basic assistance and protection. A European Union-led military force was deployed in early 2008 and will work in concert with the United Nations Mission in the Central African Republic and Chad, to improve the protection of civilians, particularly refugees and IDPs, and increase humanitarian space.

25. In southern Chad, a new refugee camp was opened to shelter the civilians fleeing northern Central African Republic. As prospects for voluntary repatriation remained uncertain for the 57,000 Central African refugees, agencies have focused increasingly on improving their self-reliance.

26. An attack by Chadian rebel forces on N'Djamena in February 2008 prompted approximately 30,000 Chadians to flee to Cameroon. Over 4,200 have still not returned.

Democratic Republic of the Congo

27. While the democratic process progressed with the organization of presidential and parliamentary elections and the installation of a new Government in 2007, fighting continued in eastern parts of the country, particularly in North Kivu and certain parts of South Kivu, where serious human rights violations, including sexual violence, affected large numbers of civilians. In addition to triggering population movements towards Burundi, Uganda and Rwanda, insecurity caused the internal displacement of about half a million people in 2007. Congolese IDPs now total 1.3 million. The pattern of IDP movements has changed in North Kivu, with

growing numbers of people seeking safe haven in spontaneous sites or camps managed by humanitarian organizations rather than in host communities where coping mechanisms had been exhausted. Another worrisome development was the attack launched by the Forces démocratiques de libération du Rwanda on Kinyandoni IDP camp in June 2008, which killed and injured many civilians.

28. Tentative steps were taken towards peace in 2008, such as the signature in Goma of a peace agreement between the Government and various rebel groups in the Kivus, and efforts to implement the Amani Plan for the eastern part of the country.

29. In other areas, such as Katanga, South Kivu and Province Orientale, improving security allowed more than 1 million IDPs to return home. Congolese refugees in the United Republic of Tanzania, the Republic of the Congo and Zambia continued to return to areas enjoying relative peace and stability. In total, some 158,700 Congolese refugees have returned home since the repatriation operation started in 2004.

C. Southern Africa

30. Repatriation operations were completed for the Angolans and launched for Congolese refugees in Zambia, contributing to the achievement of durable solutions and reducing the number of refugees in the subregion. Another encouraging trend has been the growing willingness of Governments to consider the possibility of local integration for remaining refugee groups.

31. Zimbabwe slipped deeper into turmoil as the human rights situation worsened in the aftermath of the March 2008 presidential and parliamentary elections. Politically motivated violence resulted in significant new internal displacement, adding to the victims of forced evictions and displaced farm workers who constitute the majority of those displaced previously.

32. As economic, political, social and humanitarian conditions continued to decline, many Zimbabweans were forced to leave the country to survive and support their families, with the number of people fleeing political violence, intimidation and human rights abuses mounting since the elections. Several hundred Zimbabweans sought asylum in neighbouring Botswana, Mozambique and Zambia, but South Africa remained the main destination.

33. In May 2008, South Africa was hit by a wave of unprecedented xenophobic violence targeting Zimbabweans and other foreign nationals, resulting in some 60 deaths and displacing up to 100,000 people. About 25,000 displaced foreign nationals were accommodated at temporary sites where they received physical protection and assistance. By the end of June, the number of people in sites had decreased by almost half.

D. West Africa

34. Overall, West Africa remained relatively stable in 2007, with the consolidation of peace and strengthening of constitutional order in previously war-ravaged countries, such as Liberia and Sierra Leone. In 2007, West Africa had 175,000 refugees — 30 per cent fewer compared to 2006 — owing to successful voluntary

repatriation operations and positive achievements in terms of resettlement to third countries.

35. By the end of the assisted repatriation operation in June 2007, over 158,000 refugees had returned to Liberia. In 2008, repatriation has continued on a case-by-case basis. Unrest in Buduburam refugee camp in Ghana in March and April 2008, however, resulted in the arrest and deportation of 16 Liberians, including 13 registered refugees. Subsequently, UNHCR resumed organized voluntary repatriation to Liberia for refugees wishing to return, and by midyear, some 3,300 Liberians had gone home.

36. As a result of political changes in Mauritania, the voluntary repatriation of some 24,000 Mauritanian refugees started in January 2008, with 4,700 returns from Senegal to date. Likewise, solutions may be at hand for long-staying Mauritanian refugees in Mali. The ongoing voluntary repatriation of Togolese refugees from Ghana and Benin is expected to be concluded later in 2008.

37. In Liberia, despite sustained efforts to facilitate reintegration, many people have returned to areas where recovery is making slow progress. While tackling this challenge, the Government has requested humanitarian agencies to prolong assistance programmes to help bridge the gap between relief and development.

38. In Côte d'Ivoire, the signing of the Ouagadougou Peace Agreement in March 2007 between the Government and the Forces nouvelles improved prospects for stability and the return of refugees and an estimated 700,000 IDPs. According to humanitarian agencies, by the end of May 2008, some 61,000 IDPs had returned to their areas of origin, mainly in western and central Côte d'Ivoire. Despite remarkable progress on a range of issues, social cohesion and economic infrastructure remain fragile.

III. Humanitarian response and inter-agency cooperation

A. United Nations reform

The cluster approach

39. Since 2005, the cluster approach has been implemented to ensure a more predictable and effective humanitarian response, in particular for IDPs. Through the leadership and work of the "global clusters", it has enhanced United Nations and partner engagement with IDPs through training of humanitarian workers and national authorities; technical guidance to field operations; and the development and dissemination of tools, such as the *Handbook for the Protection of Internally Displaced Persons*.[7] Several global clusters have established rosters of technical experts and cluster coordinators to be deployed quickly to emergencies.

40. The cluster approach is now being implemented in 11 African countries: the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Ethiopia, Guinea, Kenya, Liberia, Somalia, Uganda and Zimbabwe. Although Burundi, Eritrea and the Sudan have not formally adopted the cluster

[7] Provisional edition, Inter-Agency Standing Committee, December 2007.

approach, sectoral coordination mechanisms incorporate its key principles of accountability, partnership, predictability and leadership.

41. The focus should now be on moving from strengthened processes to concrete results, and there is evidence that cluster activities have had a positive impact for IDPs. For example, in Liberia, the camp management cluster has supported environmental protection and rehabilitation in 34 former IDP camps; in Côte d'Ivoire, the protection cluster has been supporting legal advice centres where IDPs benefit from legal counselling and help address property issues; and in northern Uganda, the health cluster has helped reduce the crude mortality rates to below emergency level and increase the immunization coverage to over 85 per cent.

42. To improve its interventions, UNHCR conducted five real-time evaluations of IDP operations in Africa. Achievements and gaps identified are being fed into the ongoing global evaluation of the cluster approach led by the Office for the Coordination of Humanitarian Affairs.

Delivering as One

43. In Africa, the Delivering as One initiative[8] has been piloted in Cape Verde, Mozambique, Rwanda and the United Republic of Tanzania, and refugees and IDPs have been included in joint United Nations programming in the latter three countries. In the United Republic of Tanzania, for instance, United Nations entities have become more active in refugee-hosting areas, preparing for the transition towards development activities and the local integration of refugees.

United Nations peacebuilding architecture

44. The number of countries in Africa benefiting from the new United Nations peacebuilding architecture, namely the Peacebuilding Commission and the Peacebuilding Fund, has grown from the two original pilot countries (Burundi and Sierra Leone) in 2006 to nine in 2008. At all levels, UNHCR continued to emphasize the importance of sustainable reintegration and cross-border elements in peacebuilding, including voluntary repatriation of refugees and IDPs, as well as the need for solutions for remaining refugees. The Representative of the Secretary-General on the human rights of internally displaced persons has equally ensured that the IDP dimension is taken into account in the activities of the Peacebuilding Commission.

B. Promotion of international protection principles

45. The United Nations continued to provide assistance to States to meet their international obligations to protect refugees, IDPs and others of concern.

Strengthening of national refugee protection

46. African countries have historically demonstrated strong support to international and regional legal instruments related to the protection of refugees, with 43 African States parties to the 1951 Convention relating to the Status of

[8] The Delivering as One pilot initiative is testing in eight countries how the United Nations system can deliver assistance more efficiently and in a more coordinated way.

Refugees[9] or the 1967 Protocol thereto[10] and 42 parties to the Convention of the Organization of African Unity governing the specific aspects of refugee problems in Africa.[11] However, a number of States have made reservations to those conventions and, although practices are sometimes flexible, these limitations undermine the strength and harmony of the protection regime.

47. Significant advances were made in Burundi, the Central African Republic, Guinea-Bissau and Sierra Leone, where national refugee laws were adopted in 2007. In Kenya, the refugee law adopted in 2006 came into force in May 2007. UNHCR also worked with the Angolan Government on the revision of its asylum law.

48. United Nations entities made progress in strengthening Governments' capacity to assume their primary responsibility for the protection of refugees. In Togo, the Office of the High Commissioner for Human Rights (OHCHR) supported training of staff members of the Togolese High Commissioner for Returnees and Humanitarian Action. The UNHCR Strengthening Protection Capacity Project, implemented in Burundi, Kenya, the United Republic of Tanzania and Zambia, contributed to the development of sustainable national capacities for protection.

49. To improve national refugee status determination capacity, initiatives were implemented in several countries. In partnership with the International Association of Refugee Law Judges, for example, UNHCR undertook a pilot project involving the deployment of a judge to support capacity-building for refugee status determination decision makers in four West African countries.

Mixed migration

50. Mixed population movements across borders, notably from the Horn of Africa towards Yemen, from West Africa towards Europe, and within Africa towards South Africa, posed enormous challenges for humanitarian action and international protection. Among prevention and response measures taken to address the challenges of mixed migratory movements, UNHCR and partners are working with governmental partners in Djibouti, Ethiopia, Puntland and Somaliland to enhance refugee status determination procedures and options available to those recognized as refugees. With better protection and greater access to durable solutions, fewer refugees will feel compelled to risk their lives in search of opportunities across the Gulf of Aden.

Promotion of the human rights of IDPs and operational responses

51. The acceptance, use and national implementation of the Guiding Principles on Internal Displacement have grown since 1998 as a result of continued advocacy, training and sensitization efforts by the Representative of the Secretary-General on the human rights of internally displaced persons, United Nations entities, NGOs, in particular the Internal Displacement Monitoring Centre, civil society groups and Governments. In western Côte d'Ivoire, for example, the Human Rights Division of the United Nations Operation in Côte d'Ivoire (ONUCI) sensitized over 400 representatives of local authorities, local communities, IDPs and NGOs on those Guiding Principles since early 2008.

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[9] United Nations, *Treaty Series*, vol. 189, No. 2545.

[10] Ibid., vol. 606, No. 8791.

[11] Ibid., vol. 1001, No. 14691.

52. At the subregional level, a major step forward was made in June 2008 with the entry into force of the Pact on Security, Stability and Development in the Great Lakes Region and its Protocols, including the Protocol on Protection and Assistance to Internally Displaced Persons. This Protocol aims at establishing a legal framework for the protection of the internally displaced and requires States parties to incorporate the Guiding Principles into domestic law. At the regional level, the African Union is making progress in drafting a convention for the protection and assistance of internally displaced persons in Africa.

53. Staff deployment schemes were a crucial operational asset in responding to increasingly complex and numerous IDP situations. Such mechanisms included the UNHCR/International Rescue Committee Protection Surge Capacity project and the inter-agency Protection Standby Capacity Project (ProCap). In 2008 to date, ProCap, which is hosted by the Office for the Coordination of Humanitarian Affairs with the administrative support of the Norwegian Refugee Council, deployed senior protection officers on nine assignments in Africa to various United Nations agencies to support the protection response, mainly in conflict-related IDP situations. ProCap also supported training of personnel in the emergency rosters of NGO standby partners.

Registration and documentation

54. Registration and documentation are essential tools to protect asylum-seekers and refugees by facilitating access to basic rights and services, helping to identify individuals in need of special assistance, and preventing protection abuses such as *refoulement* and forced recruitment.

55. UNHCR provided support and assistance to States to assume responsibility for registration and documentation of asylum-seekers and refugees. In 2007, the Governments of Malawi, Namibia and Zambia have assumed more responsibility in managing registration systems based on technology provided by UNHCR. In Namibia, the Government began issuing identification cards to refugees similar to those issued to nationals.

56. The protection and camp coordination and camp management cluster supported IDP profiling surveys in Chad, Côte d'Ivoire and Somalia and gave Somalia and Uganda technical support in operational data management. The profile obtained of the IDP population was used to provide direct assistance, hone programme strategies and advocate for their protection.

57. The lack of systematic issuance of birth certificates by national authorities to refugee and IDP children remains of concern. Measures were taken to raise awareness of the importance of birth registration and to facilitate access to such documentation for refugee children. Examples included the provision of funds to reduce the cost of birth certificates in Somalia and education campaigns on the importance of acquiring a birth certificate targeting refugees in Ghana and the Democratic Republic of the Congo.

Security of persons of concern

58. In countries plagued by conflict and unrest, such as the Central African Republic, Chad, the Democratic Republic of the Congo, the Sudan and Somalia, insecurity continued to threaten displaced people's lives, put them at risk of further

displacement and limit their access to basic rights and services, including education and food. Despite constant monitoring and efforts to sensitize authorities, armed groups and displaced populations on the importance of maintaining the civilian and humanitarian character of camps, these principles were not always respected. In Chad, for instance, regular incidents of forced and voluntary recruitment by armed elements in refugee camps and IDP sites were a serious problem.

Prevention and response to sexual and gender-based violence

59. United Nations entities and their partners took steps to coordinate their actions to prevent and respond to sexual and gender-based violence, notably through the United Nations Action against Sexual Violence in Conflict joint initiative. In Darfur, much of the work of OHCHR involved documenting cases of gender-based violence against women and girls who had been sexually assaulted by State and non-State actors. In the Congo, UNHCR maintained 51 drop-in centres and conducted awareness sessions for about 3,000 individuals in Loukolela and Betou areas. United Nations entities, including UNICEF, the United Nations Population Fund (UNFPA) and Human Rights/United Nations Organization Mission in the Democratic Republic of the Congo, and their partners reinforced activities to combat sexual and gender-based violence in the east of the Democratic Republic of the Congo, where shocking incidents occurred with impunity. Activities included a major sensitization campaign, reinforced health response and the training of legal officers.

60. The establishment of sexual and gender-based violence standard operating procedures, which ensure that systems are maintained for effective prevention and response, has brought tangible results. In Burundi, 96 per cent of the 300 survivors who reported sexual and gender-based violence in returnee areas received adequate medical, legal and psychosocial support.

61. UNFPA has provided essential life-saving post-rape treatment kits in numerous displacement settings and undertaken training for the clinical management of rape victims in several African countries. Despite these efforts, the problem of sexual and gender-based violence is still widespread in many conflict zones.

Women and child protection

62. Women and children, who represent the majority of displaced populations, have specific protection needs and concerns. Efforts to empower women made some progress through increasing the participation of women in representative committees, notably in Kenya, Rwanda and the United Republic of Tanzania. Overall, the meaningful participation and empowerment of women remains a challenge. Providing sanitary materials is a specific priority, considering its serious impact on women's dignity, security, health, protection and girls' access to education.

63. Forced recruitment of displaced children remained a critical problem in African countries plagued by long-running conflicts, although continued advocacy efforts had a positive impact on the release of child soldiers in various situations. In Uganda, UNICEF and partners reunited over 1,000 formerly abducted children with their families and helped them reintegrate into their communities through basic skills training and income-generating activities.

64. Building on Executive Committee Conclusion No. 107 on children at risk,[12] UNHCR and partners worked to strengthen child protection systems, with a particular focus on unaccompanied children and the engaging of children in participatory assessments aimed at improving programmes for their benefit. In May 2008, UNHCR released Guidelines on the Formal Determination of the Best Interests of the Child, which are part of a comprehensive child-protection system currently being implemented in 18 countries in Africa. Partner agencies, such as UNICEF and NGOs with expertise in child protection, support the process in the field.

Statelessness

65. Though relatively small in numbers compared to refugees and IDPs, statelessness is, nonetheless, a reality in Africa. UNHCR continued to identify stateless populations and people who are unable to establish their nationality. To date, reliable country-level data is available for some 100,000 stateless people, although the actual number on the continent is believed to be significantly higher.

66. During the reporting period, UNHCR provided States with technical advice on nationality, related legislation and its application. In Kenya, UNHCR advocated for measures to resolve the situation of Nubians and other stateless groups. It ensured that the tripartite agreement for the voluntary repatriation of Mauritanian refugees from Senegal included nationality guarantees. In Côte d'Ivoire, with the support of the Norwegian Refugee Council, UNHCR provided information and counselling on documentation, identification, nationality and land and property issues to IDPs and people at risk of statelessness. Sustained advocacy is required to increase the number of States party to the 1954 and 1961 conventions on statelessness (currently standing at 11 and 7 African States, respectively), as well as to improve the implementation of the provisions relating to nationality in other treaties.

C. Ending forced displacement

Solutions to forced displacement

67. Although voluntary repatriation remained the preferred solution for most refugees, 2007 saw the development of comprehensive strategies for several protracted refugee situations. The consolidation of peace and security allowed over 300,000 refugees to return home in 2007, mainly to Angola, Burundi, the Democratic Republic of the Congo, Liberia, Mauritania, Southern Sudan and Togo.

68. After a considerable period during which voluntary repatriation was given preference over other solutions for refugees, local integration is experiencing a significant revitalization in Africa. A notable illustration was the comprehensive solutions plan adopted for some 218,000 Burundian refugees in the United Republic of Tanzania who had fled their country in 1972. In 2007, the Government of the United Republic of Tanzania agreed to offer local integration, including naturalization, to those choosing to remain. Refugees wishing to return home are being assisted to repatriate and reintegrate. The UNHCR strategy calls for the provision of community-based support in refugee-hosting areas, and the

[12] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 12 A* (A/62/12/Add.1), chap. III, sect. A.

mobilization of United Nations partners in the United Republic of Tanzania, as well as other development actors and donors.

69. Positive developments with local integration of refugees were recorded too in Central and West Africa. In Central Africa, encouraging steps were taken in various countries to facilitate the local settlement of refugees from Nigeria, Republic of the Congo and Rwanda. For remaining Liberian and Sierra Leonean refugees who opted not to repatriate, UNHCR is working with the Economic Community of West African States (ECOWAS) and its member States to facilitate the implementation of the ECOWAS Treaty to secure legal possibilities for local integration.

70. Third-country resettlement[13] of refugees is most successful when used strategically and as a complement to other durable solutions. As a tangible demonstration of international burden sharing, resettlement can help reassure Governments hosting large numbers of refugees, enhance protection space and increase receptivity to other solutions for refugees. Approximately 19,000 refugees comprising 28 nationalities were referred for resettlement in 2007.

71. Securing durable solutions in the form of voluntary, safe and dignified return, local integration or settlement[14] for IDPs remains a challenge, particularly in some countries where political considerations take precedence over the rights of IDPs. In 2007, the Representative of the Secretary-General on the human rights of internally displaced persons developed a Framework for Durable Solutions for Internally Displaced Persons. This tool aided implementation of the Goma peace process in the east of the Democratic Republic of the Congo, as well as of the Protocol on Protection and Assistance to Internally Displaced Persons, adopted at the International Conference on the Great Lakes Region.

72. In 2007, major IDP return movements took place in Southern Sudan, northern Uganda, parts of the Democratic Republic of the Congo and Côte d'Ivoire. Approximately 1.7 million IDPs returned home to those areas. The principal obstacles to resolving IDP situations in the Democratic Republic of the Congo, Kenya and Somalia are insecurity; lack of protection; unequal or lack of access to documentation, property restitution or livelihoods; and political participation.

Sustainability of solutions

73. The durability of repatriation and local integration is perhaps the greatest challenge for ending a cycle of forced displacement. UNHCR has continued to promote the early engagement of development actors in post-conflict situations, as IDPs and refugees are reluctant to return to war-ravaged areas where the most basic services, such as education and health, are unavailable and where competition for land and other livelihood opportunities may bring them into conflict with other groups.

74. In the Democratic Republic of the Congo, within the framework of the reintegration and community recovery cluster, UNDP has been implementing six short-term reintegration and recovery projects in areas of IDP and refugee return to address their specific and urgent needs. In Liberia, following an assessment with UNHCR in 2006 on reintegration needs, the International Labour Organization

[13] Resettlement is the term used to describe permanent third country relocation by refugees.

[14] Settlement is the term used in the context of IDPs to denote establishment by them in another part of the country.

(ILO) carried out a survey of employment opportunities to facilitate the reintegration of returnees, resulting in a project that improved the income of over 200,000 people and combined the efforts of a wide range of national and international stakeholders.

75. Inter-agency collaboration is also crucial in the area of local integration. In West African countries where a legal framework for local integration is in place, UNHCR has engaged key partners, such as UNDP, ILO, UNICEF and the Food and Agriculture Organization of the United Nations (FAO), to help enhance refugee livelihoods, including through agriculture, education and vocational training. In the United Republic of Tanzania, UNHCR has approached ILO to include refugees from Burundi in the Joint United Nations programme on wealth creation, employment and economic empowerment.

76. Ensuring the sustainability of repatriation and local integration requires the involvement of receiving communities in the design of humanitarian and post-conflict programmes. In Côte d'Ivoire, in addition to monitoring and mediation efforts, The Human Rights Division of ONUCI has funded income-generating activities for communities and returnees. Overall, however, funding for early recovery and sustainability measures remains a challenge.

77. Durable solutions for IDPs and refugees are closely linked to peacebuilding processes. Return may create or exacerbate friction between former displaced persons and communities, and overcoming tensions may require peacebuilding activities, ideally based on integrated strategies for post-conflict recovery. In Kenya, UNDP interventions in areas affected by post-election unrest focus on returning IDPs and the communities and include support to local peacebuilding initiatives. UNHCR promoted consultations with Darfur refugees in Chad in the Darfur-Darfur dialogue, as well as the participation of refugees from the Democratic Republic of the Congo in the Goma peace conference held in January 2008.

D. Delivery of assistance and special needs

78. A favourable protection environment hinges on security from violence and exploitation. But human dignity also requires safeguarding other fundamental rights, including access to adequate shelter, clean water and sanitation, sufficient food, primary health care and education.

Humanitarian response capacity and constraints

79. New displacement crises in the Central African Republic, Chad, the Democratic Republic of the Congo, Somalia and the Darfur region of the Sudan necessitated the speedy mobilization of human, logistics and material resources. In 2007, UNHCR and its partners made 113 emergency staff deployments to 11 operations in Africa. Additional refugee and IDP sites were established to accommodate newly displaced persons, notably in Cameroon, Ethiopia, the Democratic Republic of the Congo and southern Chad.

80. Humanitarian workers faced grave threats to their security, resulting sometimes in the temporary evacuation of personnel. Several United Nations staff members and partners lost their lives and many others were hijacked or kidnapped while on duty. In Darfur, between January and June 2008, 8 humanitarian workers

were killed, 117 humanitarian personnel were temporarily abducted and 125 humanitarian vehicles were hijacked. Thirty-six drivers contracted by the World Food Programme (WFP) are still missing. This has had enormous implications on humanitarian operations. Attacks on WFP convoys have seriously delayed the delivery of food aid, resulting in a drop of more than 40 per cent in the level of assistance since May 2008. In neighbouring Chad, insecurity compelled humanitarian organizations to evacuate staff on several occasions and make contingency arrangements to ensure the delivery of assistance.

81. Despite serious security problems and logistical constraints, humanitarian agencies made every effort to deliver assistance and protection to displaced populations. In 2007, WFP food reached over 1.5 million people in Somalia, and UNICEF provided family relief kits to over 240,000 individuals displaced by flooding or conflict in the country. In Chad, insecurity and poor road conditions required complex logistics operations and intricate planning to pre-position food stocks supplied from long distances. Detailed planning allowed WFP to respond effectively to the crisis, particularly in mid-2007 when the numbers of IDPs in need of assistance rose from 50,000 to 150,000.

82. In many operations, costly air transport was necessary to guarantee an effective and timely humanitarian response and to transport personnel who otherwise would not have access. In 2007, as logistics cluster lead, WFP provided air transport services to the humanitarian community in 12 African countries.

Food and nutrition

83. In 2007, WFP assisted 1.53 million refugees, some 900,000 returnees and 6.3 million IDPs in Africa, mainly through general food rations, school feeding and supplementary feeding programmes. In an effort to ensure the efficient use of food aid, United Nations agencies, NGOs and local authorities undertook 11 joint assessment missions and nutrition surveys in 2007.

84. Prioritization of nutrition programmes, additional funding and joint efforts helped to reduce global acute malnutrition rates in refugee operations most affected by the problem, notably in Djibouti, Ethiopia and Kenya. Additional efforts are required, however, to reach the international standard of 5 per cent global acute malnutrition for stable humanitarian situations. In Eastern Sudan, the global acute malnutrition rate reached an alarming 22.7 per cent. High rates of anaemia have also been observed in many operations and will require concerted efforts.

85. Of significant concern is the impact of the current global food crisis on displaced persons, whose livelihood opportunities are too often scarce or non-existent. The Secretary-General's High-Level Task Force on the Global Food Security Crisis, specifically cites the needs of refugees and displaced people in its Comprehensive Framework for Action, which will be adopted later in 2008, and calls for emergency food assistance, nutrition interventions and safety nets to be enhanced to protect their basic needs.

Health

86. More strategic resource allocation and reinforced inter-agency cooperation among health partners helped improve the quality and coverage of care provided to the displaced. Specific examples include the number of countries meeting the ratio

of camp-based refugees per primary health-care facility which, according to provisional 2007 UNHCR indicators, has improved from 42 per cent in 2006 to 61 per cent in 2007. Malaria and reproductive health indicators improved significantly in several refugee camps. In camps in Ethiopia, the rate of births attended by skilled personnel increased from 14 to 90 per cent between 2006 and 2007, with no recorded maternal deaths.

87. Inter-agency efforts have helped to enhance epidemic preparedness and response activities. In Chad, the World Health Organization (WHO) public health team has worked with UNHCR, UNICEF and health partners to deliver emergency support to IDPs, refugees and local population for disease and nutritional surveillance, early warning and outbreak response systems. Through that collaborative support, health partners have detected and controlled 14 disease outbreaks since 2005. Inter-agency collaboration has also helped organize health service delivery for IDPs and local communities in the Sudan, Somalia and Uganda and for returnees in Burundi.

88. Notwithstanding these improvements, massive resources are still required to make quality health services available to displaced persons in Africa, where life expectancy at birth is still the lowest in the world.

HIV and AIDS

89. Needs remain enormous in Africa, the continent most affected by HIV and AIDS, with 22.5 million people living with the virus and an estimated 11.4 million children orphaned by AIDS, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS).

90. Agencies conducted multisectoral assessments for IDPs in the Congo, Côte d'Ivoire and the Democratic Republic of the Congo, resulting in stronger and more comprehensive HIV programmes for IDPs. United Nations entities also worked closely on HIV risk and vulnerabilities, focusing on transactional sex work, alcohol and substance abuse and sexual violence. Rape survivors in almost 75 per cent of refugee camps in Africa now have access to post-exposure prophylaxis when reporting within 72 hours to the appropriate health facility.

91. Campaigns for the inclusion of displaced people in national HIV plans and policies registered gains especially in Southern and West Africa, where most refugees now have the same access as the local population to the national HIV programmes for prevention, treatment and care, including antiretroviral treatments.

Education

92. All children, including displaced children, should be able to enjoy the long-term benefits of education. Education is a child's basic right and an essential tool of protection against exploitation, abuse and forced recruitment.

93. In southern Chad, mass campaigns involving parents and refugee leaders resulted in a 17 per cent increase in enrolment rates at the primary level. In Southern Sudan the enrolment of children in primary school increased by 400,000 pupils in 2007 to reach 1.2 million children, including returned IDPs and refugees, as a result of a "Go to School" campaign. UNICEF, UNHCR and WFP, together with the Japan International Cooperation Agency and the Government of Southern Sudan, also

designed programmes to train and reintegrate returnee teachers to improve the quality of education in return areas.

94. Participatory assessments highlighted problems of exploitation and abuse in some school environments. To redress this, United Nations entities and NGOs launched a Safe Learning Environment Initiative, which is currently being piloted in Malawi, Namibia and Rwanda.

95. Targeted interventions were made to improve refugee girls' enrolment and retention at school, for example by increasing the number of female teachers. Those efforts have improved the situation in Dadaab refugee camps in Kenya, where the number of girls who passed the final examinations at primary level rose by 51 per cent in 2007. However, overall progress was insufficient to redress the dropout rates for girls, particularly at the secondary level.

Livelihood opportunities

96. While refugees can be an important productive resource, local populations and authorities too often view them as an economic threat. Eleven States in Africa have made reservations to article 17 on wage-earning of the 1951 Refugee Convention, thus reflecting the sensitivity on this issue in a context of relative scarce work opportunities. Withdrawing these legal limitations would help refugees improve their daily life, develop self-sufficiency and reduce dependency on humanitarian aid. This goal gained importance at a time when humanitarian aid costs, particularly fuel and food, are on the increase.

97. Initiatives are under way to improve the livelihoods of displaced persons and their host communities, such as the establishment of woodlots, forests and agro-forestry farms in Kenya, the Sudan and Uganda. Inter-agency cooperation enabled humanitarian agencies to use their limited resources judiciously and improve services for beneficiaries. In Ghana, a programme developed by UNHCR, the United Nations Industrial Development Organization and FAO will enhance the self-reliance of camp-based refugees and host communities.

E. Partnerships with non-United Nations entities

98. Close partnerships with international and local NGOs remain vital in ensuring that the basic needs of forcibly displaced people are met. Agencies have been actively involved in the Global Humanitarian Platform, which brings United Nations and non-United Nations humanitarian organizations together to identify means of improving humanitarian response through strengthened collaboration at the global and field levels.

99. United Nations entities, the African Union and subregional organizations developed targeted activities for displaced people, enhancing their strategic partnership in practical areas. In addition to the reinforcement of protection of displaced persons and the promotion of durable solutions, the main areas of cooperation involved peacebuilding, post-conflict reconstruction and mixed migration. Examples include: United Nations technical advice to the African Union during development of the draft convention on internally displaced persons in Africa; active United Nations engagement in preparation of the first African Union Special Summit of Heads of State and Government on Refugees, Returnees and

Internally Displaced Persons in Africa; and the signature of an agreement in West Africa between UNHCR, ECOWAS, and the Governments of Liberia, Nigeria and Sierra Leone to facilitate access and the transition to residence status for refugees opting to remain in their country of asylum.

IV. Conclusions and recommendations

100. **While certain post-conflict situations have stabilized, allowing a significant number of displaced persons to return home and restart their lives, millions more Africans are still forcibly displaced. The upcoming African Union Special Summit will provide a unique opportunity for Heads of State and Government to adopt new approaches to resolving these situations of forced displacement in Africa. Solutions are within reach and the concluding paragraphs of the present report present a number of recommendations.**

101. **African States, which remain the primary bearers of the responsibility for the protection of and assistance to victims of forced displacement on the continent, should redouble their efforts to develop and implement comprehensive durable solutions strategies, including expanding opportunities for local integration for refugees.**

102. **States, the African Union, subregional organizations and the international community should enhance their collaboration and interventions to ensure that peace will be sustainable in countries emerging from conflict. The recovery process and bridging the gap between humanitarian relief and longer-term development remain real and extremely problematic challenges to this goal. In particular, the international donor community must abide by its commitment to increase its post-conflict and development aid to Africa.**

103. **African States, the African Union, subregional organizations and the international community should integrate the protection and assistance needs of displaced persons in peace agreements, post-conflict transition frameworks, development plans and poverty reduction strategies.**

104. **Pending the realization of solutions, refugees and internally displaced persons frequently live in appalling and degrading conditions in camps or settlements, scattered within impoverished host communities or struggling to survive in urban environments. Cognizant of Africa's exemplary history of generosity towards victims of forced displacement, it is recommended that the African Union conclude the draft convention for the protection and assistance of internally displaced persons in Africa. Once adopted, that convention will be a groundbreaking achievement as the first international treaty focusing on IDPs.**

105. **Knowing that essentially, two out of three refugees depend on international food aid, African host countries are encouraged to create an enabling environment for refugees to become self-reliant. This entails removing counterproductive restrictions, starting with reservations States have made to key provisions in the 1951 Convention and 1967 Protocol, including those in respect of freedom of movement, work and education rights of refugees.**

106. **Displacement exposes people to greater risk of violence and exploitation, including through attacks on refugee and IDP sites, forced recruitment and**

sexual and gender-based violence, particularly when used as a weapon of war. States must discharge their fundamental responsibility to provide effective protection for refugees and IDPs, which includes maintaining the humanitarian and civilian character of displacement sites. Of particular importance is the need to end impunity for acts of sexual violence, including rape.

107. **Humanitarian workers are at times faced with grave security problems and limited access to displaced populations. States and other parties to conflict must ensure safe, timely and unhindered access to displaced populations. Troop-contributing countries and donors must provide the necessary resources and capacities to peacekeeping operations that have been mandated to protect civilians, including displaced people.**

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn.

* A/63/150 and Corr.1.
** The present report was submitted after the deadline so as to include the most recent information.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Summary

The present report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea covers the period from 2007 to mid-2008. The Special Rapporteur expresses his appreciation for and gratitude to the various agencies and organizations that provided some of the information used in the present report, including United Nations agencies, non-governmental organizations and other sources.

The Democratic People's Republic of Korea was often in the news during the year owing to the nuclear issue, which was dealt with under the umbrella of the six-party talks (between the country in question, China, Japan, the Republic of Korea, the Russian Federation and the United States of America). Those talks provided an avenue to address some of the key human rights issues covered by this report and created more opportunities in a variety of settings to deal with various key humanitarian matters between the parties.

The human rights situation in the Democratic People's Republic of Korea remains grave in a number of key areas. This report examines the situation from the following perspectives, in particular, human rights and the development process: the inequity factor; access to food and other necessities: the disparity factor; rights and freedoms: the insecurity factor; displacement and asylum: the (im)mobility factor; groups of special concern: the inequality factor; consequences of violence and violations: the impunity factor.

While much depends upon global and local political will to test the Democratic People's Republic of Korea for transparency and responsibility, whether through softer or harder entry points, that is, graduated measures, it is important to underline the long-standing and systematic nature of human rights transgressions in the country, which are highly visible, substantial and exponential. The report ends with a variety of recommendations, both short-term and longer-term, addressed to the Democratic People's Republic of Korea and to the rest of the international community, including the need to abide by international human rights standards and the need for the country to engage with the United Nations system on human rights to ensure improvement of the protection of human rights at the national and local levels.

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I. Introduction

1. The mandate of the Special Rapporteur was established by the Commission on Human Rights in 2004. It entails assessment of the human rights situation in the Democratic People's Republic of Korea. The present report of the Special Rapporteur covers the situation from 2007 to the middle of 2008; it provides an update to the information submitted in the 2008 report of the Special Rapporteur (A/HRC/7/20) to the Human Rights Council. In 2007-2008, the Special Rapporteur made visits to Japan, Mongolia and the Republic of Korea to assess the impact of the human rights situation in the Democratic People's Republic of Korea on those three countries. The reports of those visits were integrated into the report of the Special Rapporteur to the Human Rights Council in early 2008.

2. The approach of the Special Rapporteur is to continue to invite the Democratic People's Republic of Korea to respond to the mandate as an opportunity to engage with the United Nations. It is thus regrettable that, to date, the authorities of the country have declined to cooperate with him and that they have not replied constructively to his communications on cases relating to human rights violations.

3. The Democratic People's Republic of Korea is a party to four human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The Government has submitted reports under those treaties and has appeared before the various monitoring bodies established thereunder. Recently, it submitted another report to the Committee on the Rights of the Child (CRC/C/PRK/4). Second, the Democratic People's Republic of Korea is in the process of reforming its laws on narcotics control and money-laundering, and has become a party to the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The International Narcotics Control Board was invited to visit the country recently, thus implying a greater degree of openness by the authorities. Third, following devastating floods in August 2007, the Government has allowed humanitarian agencies greater access to the counties affected, and various sources indicate that the authorities have cooperated relatively well with United Nations and other agencies in food distribution and provision of assistance to needy groups.

4. On another front, the progress of the six-party talks (between six countries aimed at denuclearizing the Korean peninsula), particularly the February 2007 agreement to disable the controversial nuclear plant in the Democratic People's Republic of Korea, should be welcomed and further consolidated. More progress was made in October 2007 with the six-party agreement on second-phase actions for the implementation of the joint statement of 19 September 2005. The latter opened the door to a variety of measures, including agreement by the Government to provide a complete and correct declaration of all its nuclear programmes and to disable all existing nuclear facilities at Yongbyong by the end of the year. In July 2008, the Government agreed to disable its principal nuclear facilities by the end of October and to allow on-site inspections as part of the verification process. A cooling tower related to the nuclear reactor at Yongbyong was subsequently demolished. The agreement was that that would be done in return for international aid, especially much needed fuel. Another key development in mid-2008 was the

resumption of talks between the Democratic People's Republic of Korea and Japan in regard to Japanese nationals abducted by the former, aimed at reopening investigations on unresolved cases. Another positive development was the accession by the Democratic People's Republic of Korea to a non-aggression pact with the Association of Southeast Asian Nations in July 2008.

II. Situation

5. The human rights situation in the Democratic People's Republic of Korea remains grave, and as a testament to this, the General Assembly passed another resolution (62/167), in which it expressed its very serious concern at the human rights record of the country at the end of 2007, requested the Secretary-General to submit a comprehensive report on the human rights situation in the Democratic People's Republic of Korea and requested the Special Rapporteur to continue to report on his findings and recommendations. In March 2008, the Human Rights Council voted to extend the mandate of the Special Rapporteur for one year. The continuing negative situation in the country can be analysed from the perspectives described in the sections below.

A. Human rights and the development process: the inequity factor

6. There is a paucity of data on the development process in the country, which has a population of some 23 million (recent data on the development process can be found at http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED&HF=N&WSP=N).

7. According to The Economic Research Institute for Northeast Asia, the Library of Congress and other sources, the country's negative growth started in 1990 and continued for nine years, with per capita national income falling from an estimated $1,013 in 1992 to $573 in 1998. The economy recovered slightly starting in 1999, and the estimated per capita national income in 2004 was estimated at $914.[1] Growth has been mainly in the mining and manufacturing sectors. The gross domestic product growth rate was estimated at 1 per cent per annum in 2006.[2]

8. There has consistently been a trade deficit facing the country. For instance, exports for 2004 totalled $1.28 billion, while imports reached $2.28 billion, with a trade deficit of $1 billion.[1] External debts were estimated to be some $12 billion in 1996, owed mainly to immediate neighbours.[2]

9. The development process is marked by a lack of equity, owing to the highly stratified political structure; the elite do well, while the rest are left at the margins of the development process. The inequitable development pattern is propelled by a centrally planned economy and is characterized by an ideology-steeped top-down and isolationist approach. The country is driven by a non-democratic structure with an entrenched hierarchy interested in self-preservation, which distorts the budget and other allocations in favour of the ruling elite. There is also a clandestine economy from which the powers-that-be benefit. There is no genuine participation

[1] North-East Asia Economic Databook 2005, chap. 5 (www.erina.or/jp/en/Publications/databook/index.htm).

[2] Library of Congress, Federal Research Division, County Profile: North Korea, July 2007.

by the people, which is a key determinant of sustainable development advocated by the international community. Those who are regarded as dissidents are marginalized, discriminated against and persecuted. The gap between the haves and the have-nots is on the increase, as seen in the food situation described below, and the country suffers from a lack of distribution of resources and political power, which undermines the potential for human development.

10. In 2004, the national expenditure budget was some 351 billion won, with military expenditure at 15.6 per cent, allocations for the people's economy at 41.3 per cent, social and cultural sector allocations at 40.8 per cent and administrative expenditure at 2.3 per cent.[1] The share of military expenditure, direct and indirect, is more than meets the eye and is described in the following paragraphs.

11. According to the Economic Research Institute for Northeast Asia, while the military expenditure burden may seem light, the share of the people's economy accounted for by the Government sector is immense, and in addition to spending from the national budget, a separate organization called the Second Economic Committee has control of military expenditures, so it is thought that the proportion of military expenditure in the economy of the Democratic People's Republic of Korea is extremely large, and it would be no exaggeration to say that that is acting as a drag on economic recovery.[1]

12. Moreover, the country adheres to a so-called military first policy, with millions involved in the military and in military industry. That depletes the resources of the country in favour of militarization, in the face of many shortages and deprivations suffered by the population. It is estimated that the armed forces total over 1 million armed personnel, with another 7.7 million in the reserve component.[2]

13. It may be recalled that, in 2006, the militarization drive was manifested by various missile and nuclear tests carried out by the authorities, which were condemned by the international community. Those acts undermined the possibility of aid from other countries which reconsidered their contributions. While the six-party talks have progressed gradually on the denuclearization front, the parallel issue of overall demilitarization and a shift from a pro-military budget to a pro-people budget has not yet been addressed.

14. The economic crisis faced by the country is manifest in the rampant shortages of food and other basic necessities referred to below, particularly since the mid-1990s. The social security framework, on which the country prided itself as part of a socialist system, is now in serious decline.

15. According to a white paper on human rights in North Korea issued in 2007 by the Korea Institute for National Unification, a large portion of the North's social security system was essentially abolished with the implementation of the economic management improvement measures of 1 July 2002. Under those measures, the Government in effect gave up on supplying food, clothing and housing to its people. Owing to the conflicts and contradictions inherent in the welfare payment burdens stipulated in the State social insurance and State social security, the Government was hamstrung, and the subscribers (the citizens) had to rely exclusively on their income from work. As a result, the social safety net [the country] aspired to build largely lost its function and meaning. As a result of the July 2002 measures, the prices of daily essentials, including the price of grains, rose sharply, along with various so-called tax burdens such as apartment rents, electric bills, education tax

and transportation costs. Since the economic situation has not improved at the same rate, overall purchasing power has deteriorated considerably. For large families and people relying on their pensions, the financial squeeze has been more painful.[3]

16. Beyond the elite, people are faced with a painful paradox: on the one hand, the social safety nets that the State offered in the past are no longer reliable and the people must seek other ways to fend for themselves; on the other hand, when the people undertake various livelihood initiatives to supplement their income, the authorities clampdown on them for fear of losing their grip on the population. One of the current quandaries is the range of new laws and regulations regulating the markets, which have grown in recent years as part of the decline of State social security and as part of the experiment with the market economy. Recent regulations prohibit those under 50 years of age from trading and forbid the sale of goods outside the market building, while public officials patrol markets to suppress the activity of various traders and confiscate their wares.[4] It has been reported that the National Intelligence Agency and police stations in Pyongyang have begun to impose control over the market by checking people and their bags as they enter and leave public transport and markets.

17. The national census is to be undertaken with the support of the United Nations Population Fund. That will not only enable the collection of the most recent data on demography, but will also act as a significant basis for development programming, needs assessment and related responses.

B. Access to food and other necessities: the disparity factor

18. There is a great disparity between access by the elite to food and other necessities and access by the rest of the population to such items. Owing partly to natural disasters and partly to mismanagement on the part of the authorities, there has been a chronic food shortage since the mid-1990s affecting the general population beyond the elite. Then and now, the latter usually have first choice of whatever provisions are available.

19. The country then started to accept food aid from outside the country, particularly through the World Food Programme (WFP). In 2005-2006, the authorities demanded from the international presence a shift from humanitarian aid to a more development-oriented framework, and in the process scaled down the presence of various foreign humanitarian agencies in the country. One indirect consequence was that monitoring of aid coming into the country was reduced. While the 2005 harvest was a welcome improvement over the harvest of previous years, in mid-2006, major floods wreaked havoc on the harvest, resulting in a severe food shortfall. That was compounded by the decline of medical services and a shortage of medicines, fertilizers, electricity, and, in some areas, water. The Food and Agriculture Organization of the United Nations (FAO) estimated a cereals shortfall of some 890,000 metric tons for the period 2005-2006, and over 1 million metric tons for 2007. For more information on the food security situation access the FAO

[3] See "White Paper on human rights in North Korea 2007", Korea Institute for National Unification (Seoul, 2007).

[4] *North Korea Today*, Research Institute for North Korean Society, No. 103 (December 2007).

website at http://www.fao.org/faostat/foodsecurity/MDG/EN/KoreaDPR_e.pdf, http://www.fao.org/faostat/foodsecurity/Countries/EN/KoreaDPR_e.pdf.

20. In 2006, WFP began its two-year Protracted Relief and Recovery Operation, to provide 1.9 million people with food aid at a cost of $102 million, and providing 150,000 tons of commodities, principally targeting women and young children.

21. Severe flooding in the country in August 2007 worsened the situation, with nearly 1 million people affected by deprivations.[5] The emergency response was positive and the aid targets of some $14 million for the flash flood appeal were attained.

22. However, in 2008, it became evident that the food shortage was more serious than anticipated, with reports that millions of people in the country were facing severe deprivations not seen since the mid-1990s (see www.wfp.org and *North Korea Today*, June/July 2008). A new agreement was reached between the authorities and WFP to assist 6.5 million people. The latter had access to 131 counties (50 more than in 2007) and the authorities promised more international staff visas. WFP reported access to a number of households and county warehouses that had previously been inaccessible. In mid-2008, WFP was in fact able to reach around 3.7 million people. The United Nations Children's Fund also regained access to three key northern provinces and the opportunity to carry out more activities with more staff. Some 400,000 metric tons of food aid from the United States of America started to arrive in June 2008. WFP estimated that it would need aid equivalent to some $500 million for the next two years to respond to its expanded programme in view of the critical food situation.

23. WFP and FAO carried out an important food security assessment in June 2008 on the basis of visits to 53 counties in 8 provinces, conducting 375 detailed interviews with urban and rural families and care providers. It was thus the broadest survey since 2004. The initial findings revealed the following disquieting features, as reported by WFP in June and July 2008, below.

(a) Declining food availability in the Democratic People's Republic of Korea owing to:

(i) Reduced agricultural production for two consecutive years;

(ii) Reduced imports, commercial and food aid since 2005;

(iii) Fewer in-country transfers owing to transport constraints and more restrictions on market trade;

(iv) Soaring global food prices;

(b) Deteriorating food accessibility:

(i) Owing to low in-country transfers caused by fuel and transport constraints; skyrocketing market food prices (i.e., a threefold increase in the price of rice and a fourfold increase in the price of maize);

(ii) cuts in public distribution (officially reported at 150 grams per person per day, one third of the normal ration);

[5] See Office for the Coordination of Humanitarian Affairs, Situation Report No. 7 (10 September 2007) and World Food Programme Democratic People's Republic of Korea, Rapid Assessment Report (August 2007).

(c) Deteriorating food consumption and dietary diversity:

(i) close to three quarters of households have reduced food intake;

(ii) more than half are eating only two meals per day;

(iii) two thirds have poor dietary diversity (mainly maize, vegetables, wild food and small amounts of oil.

24. Particularly worrying is the finding that the cases of children affected by diarrhoea have increased markedly, to nearly twice the number recorded in the previous Government/United Nations nutritional survey in 2004. Child malnutrition and illnesses have thus been on the rise.

25. WFP has highlighted three groups as particularly food insecure: the socially vulnerable, including in institutional care, the elderly and children in paediatric wards; the physiologically vulnerable, including pregnant and lactating women, children under the age of five and adolescents; and the geographically vulnerable, particularly people living in the northeast and the south. Immediate food needs are closely related to the need for fertilizers and fuel.

26. United Nations agencies act on the basis of "no access, no food", meaning that if they do not have access to the areas concerned, food aid will not be given. A recurrent challenge is the distribution monitoring process. Interestingly, the report by the External Auditor on World Food Programme activities in the country (WFP/EB.2/2007/5-F/1 27 August 2007) noted the following challenges:

(a) The Government of the Democratic People's Republic of Korea required advance notice of planned food monitoring visits;

(b) World Food Programme monitors were not provided with unrestricted access to field operations, limiting the assurance obtained regarding the type of beneficiary and the quantities of food consumed;

(c) Interviews were conducted by non-Korean speaking WFP staff through an interpreter in the presence of Government officials (para. 47).

27. The External Auditor recommended that the World Food Programme ... critically review the reliability of food monitoring statistics and continue efforts to extend field monitoring agreements to support unrestricted access wherever possible, to include interpreters (para. 49, p. 17). As seen in the recent food security assessment mentioned above, currently greater access by WFP and other staff to the field opens the door to a more comprehensive and more transparent appraisal of the situation.

28. From that perspective, it is important to underline the need to generate food security in the country, for which foreign aid cannot be a substitute. That is closely linked with the need for a sustainable development process based on broad grassroots participation in income and food generation, conservation and regeneration. The types of practical programming needed include measures to deal with pre- and post-harvest losses, conservation of watershed areas, avoidance of deforestation and popular participation in planning and benefiting from agricultural development.

C. Rights and freedoms: the insecurity factor

29. Civil and political rights are severely constrained in the country owing to the repression imposed by the regime, creating insecurity among the general population. In that context, the authorities tend to divide the population into three different groups: those close to the regime, the group in the middle, and those considered hostile to the regime according to the Korean Institute for National Unification.[3] The first group is the ruling elite, which is endowed with privileges such as access to special schools and hospitals. They are allowed to own private phones and read foreign publications. The majority of the population, such as farmers and workers, makes up the second group. They are provided with food rations, although they have dwindled in recent years owing to Government experimentation with a market economy and reduction of the State-sponsored public distribution system. Members of the third group are considered enemies of the State and are persecuted accordingly. They include those who were members of the landed class before the Communist takeover of the country, public officials under Japanese rule, members of religious groups and those who assisted the forces of the Republic of Korea during the Korean War (1950-1953). They are denied access to college education and are discriminated against in their access to basic necessities, such as housing and medical care. Many end up in prisons, living in appalling conditions. When people are punished for political reasons, there is also use of collective punishment or punishment of families for guilt by association.

30. Political participation in the democratic sense is non-existent, with the ruling party in absolute control. There is rigid control over the media, and people are not allowed to own mobile phones or computers without the permission of the authorities. The Korean Institute for National Unification has reported a crackdown on cellphones.[3] Some inhabitants clandestinely watch video and television programmes from the South, but in 2008 there have been reports of crackdowns on videos from the Republic of Korea. It appears from information received that the authorities have imposed restrictions on long distance telephone calls, allegedly to block the spread of news concerning the current food shortage.

31. Of particular concern is the use of public executions to intimidate the public, despite various legal reforms in 2004 and 2005 that, it is claimed, have improved the criminal law framework and related sanctions. Overhaul of the prison system is long overdue, and the harsh conditions imposed by the criminal justice system and related detention give rise to a plethora of abuses, including torture and cruel, inhuman and degrading treatment. The abuses are ubiquitous, and include degrading treatment of deceased persons.[6]

32. *Amnesty International Report 2008*[7] summarizes the situation as follows:

> "Systematic violations of human rights continued, including capital punishment, torture and the political and arbitrary use of imprisonment. Dissent of any kind, including leaving the country without permission and unauthorized assembly or association, was severely punished and national and international media were strictly controlled. Access by independent human rights monitors continued to be denied."[7]

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[6] D. Hawke, *Concentrations of Inhumanity*, Freedom House (Washington, D.C., 2007).

[7] See http://thereport.amnesty.org/eng/Regions/Europe-and-Central-Asia/Turkey.

33. While the authorities claim that freedom of religion is respected, the situation indicates otherwise, with rigid control over those professing their religious beliefs.[8] It is reported that security personnel are ever present among religious congregations to report on their activities and that the authorities use persons disguised as religious personnel to monitor religious practices. Persecution of those professing their faith is pervasive, with families sent to prison for adhering to religious beliefs. It is also well known that those who seek the help of religious personnel in other countries in the quest for asylum are likely to be punished severely if sent back to the country of origin. Religion is thus seen by the authorities as a competitor and a threat to the personality cult practiced through the prism of top-down indoctrination.

34. On another front, the authorities have been engaged in abductions of foreign nationals. There are some 17 listed cases of Japanese in such situations, although 5 have been returned to Japan from the Democratic People's Republic of Korea. Nationals of a range of other countries have also been affected. The six-party talks have opened the door to bilateral talks between the Democratic People's Republic of Korea and Japan on steps towards normalization of relations, an important component of which is to resolve the abductions issue clearly and transparently. The most recent consultations between the two countries were held in June 2008, with the Japanese delegation requesting that all abductees be returned to Japan, that a full account of the victims be provided and that those responsible for the actions be extradited. The Democratic People's Republic of Korea responded by committing to reinvestigate the cases. It is hoped that the latter will respond substantively, constructively and expeditiously on that long-standing issue.

D. Displacement and asylum: the (im)mobility factor

35. Since its inception, the regime has regulated migration stringently as an instrument of State control. Generally, people are not allowed to move freely within the country and are able to travel abroad only with official permission. On another front, in mid-2008, it was reported that the authorities were compelling various groups, including the elderly, to leave Pyongyang around the time of important events. That would render them vulnerable to deprivation, particularly in the conditions of the current food shortage.

36. In recent years, the policy of immobility has been diluted, since many people have been displaced for political or economic reasons. On the one hand, a large number of those who are persecuted by the regime have sought refuge outside the country. On the other hand, people are also on the move within the country and across the border in search of basic necessities and improved livelihood. It has thus become more difficult for the authorities to exert full control over migration. There is also an incipient stream of workers and migrant labourers who travel to special economic zones inside the country or across the border to other countries as part of bilateral arrangements on labour importation.

37. With regard to asylum and refuge, the Special Rapporteur analysed at length the status of those who seek asylum in other countries in his previous reports (see

[8] *A Prison Without Bars: Refugee and Defector Testimonies of Severe Violations of Freedom of Religion or Belief in North Korea*, United States Commission on International Religious Freedom (Washington, 2008).

A/HRC/4/15 and A/62/264). Suffice it to state here that there are those who leave the country of origin for reasons of persecution (traditional refugees) and those who fear persecution after having left the country (refugees *sur place*). Both types are found among people from the Democratic People's Republic of Korea. The latter group exists because its members may be punished upon return for having left the country without permission (an exit visa), and that threat of prosecution is tantamount to potential or actual persecution, albeit at a later stage.

38. The situation facing those who seek refuge abroad remains precarious for a number of reasons.[9] First, more restrictions have been imposed during the past year on exit from the country and entry into neighbouring areas. There are reports of more severe sanctions imposed on those seeking to leave the country and also on those forcibly returned to the country,[10] despite possible indications of a more lenient attitude on the part of the authorities a couple of years ago. Some sources report a "shoot on sight" policy in regard to those who seek to leave the country clandestinely, in addition to violence against pregnant women forcibly returned to the country. Also, instead of the previous practice of imposing fines, prison sentences are now being applied. Bribing the relevant officials may mitigate some of the sanctions. Second, there are indications that asylum-seekers are being apprehended through the promise of rewards (bounties) offered by the local authorities in an asylum country to help identify them, with a view to forcibly returning them to the country of origin. Third, more severe punishments for those offering asylum across the border are now being threatened.

39. The scenario is all the more complicated owing to the following features. First, owing to the more restrictive border conditions and the fact that it has become more difficult for groups to access asylum in some of the neighbouring countries, those who reach those countries tend to depend on smugglers, with the promise of large sums to change hands in the process. Second, there is a difference between those who left the country a while ago and resided in a neighbouring country for several years before moving on to another country, and those who exited recently and headed for an asylum country, transiting briefly through a neighbouring country. With regard to the former, there is the question of whether those who resided in the neighbouring country for a long period, for example, over 10 years, should be eligible for resettlement in a third country. Perhaps the best test is to ask whether the person is protected by the country of origin and/or by the country of residence. If not, the door to resettlement in another country should be open to the person in question.

40. With regard to both the long-standing residents and the newcomers, there is, regrettably, the threat that they will be prosecuted for illegal entry in some of the countries of refuge. The Special Rapporteur has emphasized in his reports that they should not be prosecuted and should not be treated as illegal immigrants. Rather, they should be treated as asylum-seekers or refugees deserving international protection. A possible characterization on that front would be to treat them as humanitarian cases, not subject to the strictures of the immigration laws of the countries where they seek asylum. It is worth remembering that conceptually there

[9] P. Cammarota, J. Crace, K. Worly and H. Saltzman, *Legal Strategies for Protecting Human Rights in North Korea*, Skadden, Arps, Meagher & Flom LLP & Affiliates and U.S. Committee for Human Rights in North Korea (November 2007).

[10] *North Korea Today*, No. 114 (March 2008).

is a difference between refugees and illegal immigrants: while the latter are still protected by the country of origin, the former are not and should thus be afforded international protection.

41. Third, there is the question of the status of children born in other countries to one or more parents from the Democratic People's Republic of Korea. In a case where the parent is living clandestinely in the country where the child is born, it is often difficult to register the birth of the child, unless a special deal is agreed upon (possibly illicitly) with the authorities. There is also the question of the nationality of the child. Given that everyone from the Democratic People's Republic of Korea is in principle viewed by the law of the Republic of Korea as a citizen of the Republic of Korea, would the same apply to a child of nationals of the Democratic People's Republic of Korea born outside the Democratic People's Republic of Korea? The approach of the Special Rapporteur is to invite responses aimed at ensuring that the child does not become stateless.

42. Fourth, there is the question of family reunification. In the process of exodus or flight, families are often dispersed, with both or one of the parents leaving first, in the hope that one day they will be joined by the rest of the family. Family reunion of nationals of the Democratic People's Republic of Korea often takes place subsequently, which does not give rise to major problems in situations where the husband, wife and child are all nationals of the Democratic People's Republic of Korea born in the Democratic People's Republic of Korea. However, matters are more complicated when a national of the Democratic People's Republic of Korea marries a national of another country and gives birth to a child after that. Any hope of family reunion for the latter would depend upon flexible bilateral and other negotiations to enable family reunion to take place, without too many preconditions.

43. In reality, matters may be even more convoluted; often the displacement involves a mixed or composite flow, with a variety of reasons for the exodus, including political, economic and other factors. That can be further complicated by human trafficking and smuggling, whose practitioners often prey on those who are already vulnerable. Thus, a humane response is invited from all countries, to respect the human rights of those who are displaced, whatever their designation and however they are classified. Particularly concerning the refugee, there is a key principle of international law that prohibits forced removal to areas of danger ("non-refoulement"), an imperative to be respected. In that regard, it is important to reinforce the work of the Office of the United Nations High Commissioner for Refugees to exercise its mandate in all relevant situations, with effective access to those who are in need of international protection. The Special Rapporteur is in contact with that Office in a mutually supportive manner under their respective mandates.

44. With regard to workers and migrant labourers, it is important to highlight the need to respect labour rights, such as fair wages, the right to collective bargaining and freedom of association, the right to send remittances home and humane working conditions. Regrettably, the country has not yet engaged with the International Labour Organization (ILO), and it needs to join ILO conventions and implement them well at the national and local levels.

E. Groups of special concern: the inequality factor

45. Like the constitutions of many other countries, the Constitution of the Democratic People's Republic of Korea lays down the principle of non-discrimination and equality, particularly between men and women. Yet, while women constitute the majority of the workforce, their access to key decision-making positions is still limited. In addition to stereotyped roles for women, an issue that has not been addressed adequately in the national setting is violence against women. It varies from home-based violence to State-linked violence.

46. The situation has thus become critical in recent years in the face of food shortages, compounded by other deprivations such as lack of medicines and clean water. Of particular concern is women who are not part of the elite and are often disadvantaged in their access to food and other necessities. Those who are seen as enemies of the regime are subject to persecution and marginalization.

47. Attention should be paid to those women who leave the country in search of asylum and are often subjected to human trafficking and smuggling. The Special Rapporteur has talked directly with many such women, some of whom were sold into forced marriage in a neighbouring country before moving on to seek refuge elsewhere. The reasons why criminals prey on that group were referred to in the previous reports of the Special Rapporteur, and include the pretext of family reunion, and the belief that women keep their promise to pay up more conscientiously than men and that they are less likely to be prosecuted for illegal entry into another country (see A/HRC/4/15, para. 30, and A/62/264, para. 42).

48. What of refugee women who wish to marry in the final resettlement country? A new law in the Republic of Korea now allows for that, and it remains to be seen how many will make use of the opportunity.

49. With regard to child rights, a recent self-assessment by the country is contained in the country's consolidated third and fourth reports submitted under article 44 of the Convention on the Rights of the Child (see CRC/C/PRK/4). Of note is the range of new plans and laws that has come into existence in recent years, which includes the 2005 law on tobacco control, which prohibits the sale of tobacco to minors; 2004 and 2005 amendments of the Criminal Code and Criminal Procedure Code to offer clearer categorization of criminal offences; and the 2004 family law affording protection to mothers and children. The country has formulated a national programme of action for the well-being of children 2001-2010, reflecting some of the Millennium Development Goals. There are also the following: a national plan for action on education for all for the period 2003-2015, the Strategy for the promotion of reproductive health 2006-2010, a work programme for the protection of persons with disabilities for the period 2008-2010 and a primary health-care strategy for the period 2008-2012. International agencies indicate receiving good cooperation from the authorities on some fronts, such as with regard to vaccination against measles.

50. There remains the challenge of implementation against the backdrop of international standards, and the looming political penumbra that manipulates child development as part of the survival strategy of the regime in power. Assessing the implementation of child rights against the hierarchical and stratified nature of the political system is of particular importance; obviously, those who are not part of the elite are more susceptible to discrimination. They include street children, hungry for

help and sustenance, known as the Khojetbis. Matters grow more complicated if they leave the country of origin for refuge elsewhere. The report recently submitted by the Government of the Democratic People's Republic of Korea to the Committee on the Rights of the Child (CRC/C/PRK/4) is decidedly thin in regard to the special protection measures needed to address the particular concerns of children in difficulties, such as refugee children, children of political dissidents, children of minorities, abused or neglected children and children who are in conflict with the authorities. There is an urgent need to improve the criminal justice system as it affects children, bearing in mind international juvenile justice standards, particularly in view of reports that children allegedly involved in crimes are being tried publicly,[11] without respect for their privacy and best interests. That is related to the question of prisons and detention facilities as a whole.

51. Elderly persons are also increasingly vulnerable to the mounting deprivations, given the food and economic uncertainties in the country. The plight of those with disabilities is similar.

F. Consequences of violence and violations: the impunity factor

52. In retrospect, through the reports of the Special Rapporteur and other sources, it is clear that there have been and are serious human rights violations in the country. It is incumbent upon the national authorities and the international community to address the impunity factor, which has enabled such violations to exist and/or persist for a long time.

53. The softer entry point to deal with the misdeeds of local officials is to make them more accountable at the national level. That may be taking place in situations where law enforcers and others are prosecuted for crimes committed against the population. However, care should be exercised to test such actions from the standpoint of international standards. Given the non-independent nature of the judiciary in the country, it is difficult to ensure that justice is done and that is being seen to be done.

54. The harder entry point is to advocate for more accountability in the international setting, whether in terms of State responsibility or individual criminal responsibility. The fact that the mandate of the Special Rapporteur was established in 2004 may be seen to be part and parcel of that trend, which militates against impunity and emphasizes the accountability of those who should be responsible for human rights violations. That is reiterated and advanced by United Nations resolutions, particularly General Assembly resolutions on the country in question, which exert graduated pressure for accountability. Yet, the question remains whether the issue of violations in the Democratic People's Republic of Korea will be taken up at some stage at the pinnacle of the system, within the totality of the United Nations framework.

55. As noted in the previous report of the Special Rapporteur, civil society has begun to advocate the responsibility of the authorities for human rights violations, with possible resort to the Security Council and a non-binding resolution, as part of

[11] *North Korea Today*, No. 177 (July 2008).

the responsibility to protect the people.[12] There may also be avenues for mobilizing action for individual criminal responsibility, inspired by the presence of the International Criminal Court, where the local system is unable or unwilling to act to make individuals accountable for serious crimes.

56. The above actions are part of the multilateral framework for accountability. Another entry point is to examine whether other arrangements, regional, bilateral or mixed, may be possible to advocate a sense of responsibility to counter the impunity factor. On a more facilitative side, it is regrettable that the country has not sought assistance from the Office of the United Nations High Commissioner for Human Rights to improve its justice system and human rights implementation. Given that the six-party talks mentioned earlier are currently also dealing with some aspects of human rights through bilateral and other tracks, such as a possible peace treaty for the Korean peninsula that could cover the question of missing persons and separated families and the issue of abductions committed by agents of the Democratic People's Republic of Korea, there may be additional space to influence more effective implementation of human rights in the national setting.

57. It will also be interesting to see how the country engages with the new universal periodic review system under the Human Rights Council. The Special Rapporteur invites the system to take his analysis and recommendations into account effectively and substantively as part of the dialogue and follow-up process, in addition to the possible entry points for technical cooperation with the United Nations to improve the situation on the ground.

58. While much depends upon global and local political will to test the desire of the Democratic People's Republic of Korea for transparency and responsibility, whether through softer or harder entry points, it is important to underline the long-standing and systematic nature of human rights transgressions in the country, which are highly visible, substantial and exponential.

III. Communications

59. The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right to food, sent a joint communication to the Government of the Democratic People's Republic of Korea on 20 March 2008 concerning the alleged public executions of 15 nationals of the Democratic People's Republic of Korea. The 13 women and 2 men were reportedly accused of planning to cross over to a neighbouring country to receive economic assistance with the help of relatives living abroad. The Government of the Democratic People's Republic of Korea did not reply to the communication.

60. The Government of the Democratic People's Republic of Korea also did not reply to a communication, sent by the Special Rapporteur on 7 April 2008, seeking clarification on the whereabouts and the safety of 22 nationals of the Democratic

[12] See *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, U.S. Committee for Human Rights in North Korea (Washington, 2006); *North Korea: A Case to Answer — A Call to Act*, Christian Solidarity Worldwide (London, 2007).

People's Republic of Korea. The group, comprising 14 women and 8 men, among them 3 teenagers, was returned to the Democratic People's Republic of Korea after they reportedly drifted to Southern waters in the Western Sea near Yongpyong Island by accident.

IV. Recommendations

61. Given that the human rights situation in the Democratic People's Republic of Korea remains grave on several fronts, it is essential to press for concrete actions to address the various challenges described in the present report in an expeditious and effective manner.

62. The Democratic People's Republic of Korea should take the following measures:

(a) Immediately (short-term):

(i) Ensure effective provision of and access to food and other basic necessities for the people of the country, and cooperate constructively with United Nations agencies and other humanitarian actors on the issue;

(ii) End the punishment of asylum-seekers returned from abroad;

(iii) Terminate public executions and other abuses against the security of the person;

(iv) Cooperate transparently and accountably to resolve the issue of foreigners abducted by the Democratic People's Republic of Korea;

(v) Invite the Special Rapporteur to the country to assess the human rights situation on the ground and to advise on needed improvements;

(b) Progressively (longer-term):

(i) Ensure a more equitable development process in the country; implement human rights effectively and comprehensively, bearing in mind that it is party to four human rights treaties; and transfer resources from the militarization process to the social development sector;

(ii) Overcome disparities in access to food and other basic necessities, and build food security through sustainable agricultural development with broad-based people's participation;

(iii) Guarantee the security of the human person by modernizing the national system, reforming prisons and abiding by the rule of law, such as ensuring safeguards for accused persons, fair trials and the development of an independent judiciary;

(iv) Adopt a clear policy not to punish those who leave the country without permission, amend the law and train the relevant officials accordingly;

(v) **Address the root causes of refugee outflows; criminalize those who exploit them through human smuggling, trafficking and extortion, while not criminalizing the victims; accede to international treaties on the issue;**

(vi) **Become a party to the conventions of the International Labour Organization and implement them effectively;**

(vii) **Protect the rights of women, children and other groups, particularly by overcoming the inequalities and discrimination facing them;**

(viii) **Address impunity for violence and violations, ensuring that those who should be accountable are brought to justice;**

(ix) **Request technical assistance from the Office of the United Nations High Commissioner for Human Rights to help promote and protect human rights in the country;**

(x) **Engage transparently and sustainably with the treaty bodies to which the Democratic People's Republic of Korea is party, with effective follow-up on recommendations and access to the country.**

63. **The international community is invited to take the following measures:**

(a) **Emphasize more strongly the need for participatory, sustainable and equitable development in the country and highlight strategies for food security, while continuing to ensure that humanitarian aid reaches the target groups ("no access, no aid"), including through effective monitoring;**

(b) **Respect the rights of refugees, particularly the principle of non-refoulement, abide by the human rights of migrants, and mitigate the strictures of national immigration laws that might otherwise lead to the detention of refugees or asylum-seekers;**

(c) **Maximize dialogue with the Government of the Democratic People's Republic of Korea to promote dispute resolution, and enlarge the space for human rights discourse and action, with relevant packages of incentives and graduated pressures, possibly linked with security guarantees, as appropriate;**

(d) **Ensure a calibrated approach within the United Nations so as to utilize the leverage throughout the United Nations system to influence positive changes in the country;**

(e) **Address the impunity factor through a variety of entry points, whether in terms of State responsibility or individual criminal responsibility.**

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Report of the International Criminal Court

Report of the International Criminal Court**

Note by the Secretary-General

The annual report of the International Criminal Court is submitted herewith to the General Assembly, in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court (see A/58/874 and Add.1, annex) and paragraph 16 of Assembly resolution 62/12.

* A/63/150 and Corr.1.
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Report of the International Criminal Court to the United Nations for 2007/08

Summary

The present report, covering the period from 1 August 2007 to 31 July 2008, is the fourth annual report of the International Criminal Court ("the Court") submitted to the United Nations. It covers the main developments in the Court's activities and other developments of relevance to the relationship between the Court and the United Nations.

Four situations were before the Court during the reporting period. The Prosecutor continued to investigate the situations in the Democratic Republic of the Congo; Uganda; Darfur, the Sudan; and the Central African Republic.

In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I stayed proceedings and ordered the unconditional release of the accused in light of the non-disclosure by the prosecution to the defence of potentially exculpatory evidence obtained on condition of confidentiality. The prosecution has since appealed the decisions staying proceedings and ordering Mr. Lubanga's release and has requested that the Trial Chamber lift the stay of proceedings. Mr. Lubanga remains in custody pending the outcome of the appeals proceedings.

The Court issued or unsealed four new warrants of arrest — three in the situation in the Democratic Republic of the Congo and one in the situation in the Central African Republic.

Germain Katanga and Mathieu Ngudjolo Chui were surrendered to the Court on 17 October 2007 and 7 February 2008 respectively. They are each charged with nine counts of war crimes and four counts of crimes against humanity in the situation in the Democratic Republic of the Congo. A hearing to confirm the charges against them was held from 27 June to 16 July 2008. A decision on the confirmation of charges is expected to be rendered by 26 September 2008.

In the situation in the Central African Republic, Mr. Jean-Pierre Bemba Gombo was arrested in Belgium and surrendered to the Court on 3 July 2008. He is suspected of having committed three counts of crimes against humanity and five counts of war crimes. A hearing on the confirmation of charges against Mr. Bemba is currently scheduled to take place on 4 November 2008.

On 14 July, the Prosecutor submitted an application for a warrant of arrest against Mr. Omar Hassan Ahmad Al-Bashir, President of the Sudan, on counts of genocide, crimes against humanity and war crimes. The application is being considered by the judges of Pre-Trial Chamber I.

Seven warrants of arrest are outstanding: four in the situation in Uganda, two in the situation in Darfur, the Sudan, and one in the situation in the Democratic Republic of the Congo. All of the warrants have been outstanding for over a year; four have been outstanding for over three years. The Court does not have the power

to arrest persons. This responsibility belongs to States and, by extension, international organizations. The Court continued to strengthen its cooperation with States, the United Nations and other actors with a view to ensuring the necessary support in all areas.

The Court has developed more than three years of experience with its field operations and continues to adapt its activities in the field to reflect its judicial developments.

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I. Introduction

1. The present report, covering the period from 1 August 2007 to 31 July 2008, is the fourth annual report of the International Criminal Court ("the Court") submitted to the United Nations. It covers the main developments in the Court's activities and other developments of relevance to the relationship between the Court and the United Nations since the third report of the Court to the United Nations (A/62/314).

2. The Court was created by an international treaty, the Rome Statute, which was adopted on 17 July 1998 and entered into force on 1 July 2002. In the 10 years since its adoption, 108 States have ratified or acceded to the Rome Statute.

3. The Court is an independent judicial institution, charged with carrying out investigations into and trials of individuals for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The Rome Statute guarantees that proceedings before the Court are carried out fairly, impartially and publicly, with full respect for the rights of the accused and consistent with internationally recognized human rights. Victims may participate as deemed appropriate by the judges of the Court in accordance with the constituent instruments of the Court.

4. In carrying out its functions, the Court relies critically on the cooperation of States, international organizations and civil society in accordance with the Rome Statute and international agreements concluded by the Court. Areas where the Court requires cooperation include facilitating investigations, arresting and surrendering persons, protecting witnesses and enforcing sentences.

5. The Court is independent from but has close historical, legal and operational ties to the United Nations. The relationship between the Court and the United Nations is governed by the relevant provisions of the Rome Statute and by the Relationship Agreement between the International Criminal Court and the United Nations (A/58/874, annex). During the reporting period, the Court continued to develop its cooperation with the United Nations.

6. Four situations were before the Court during the reporting period. The Prosecutor continued to investigate the situations in the Democratic Republic of the Congo; Uganda; Darfur, the Sudan; and the Central African Republic. Judicial proceedings took place in each situation. The Prosecutor also carried out analysis activities on three continents. Developments in these situations and of an institutional nature are set out below.

II. Situation in the Democratic Republic of the Congo

7. The situation in the Democratic Republic of the Congo was referred to the Court by that State Party to the Rome Statute on 19 April 2004. The Prosecutor opened an investigation into the situation on 23 June 2004.

A. *The Prosecutor v. Thomas Lubanga Dyilo*

8. During the reporting period, Trial Chamber I engaged in preparations for the trial of Mr. Thomas Lubanga Dyilo, alleged leader of the Union des Patriotes

Congolais pour la Reconciliation et la Paix and Commander-in-Chief of its military wing, the Forces Patriotiques pour la Libération du Congo. Mr. Lubanga is charged with war crimes, specifically enlisting, conscripting and using children under the age of fifteen years to participate actively in hostilities. To date, four victims have participated in the proceedings in relation to the case against Mr. Lubanga.

9. On 13 June 2008, Trial Chamber I issued a stay of proceedings, finding that a fair trial was not possible at the time due to the failure of the prosecution to disclose a significant body of potentially exculpatory evidence to the defence or to make the evidence available to the judges. The materials at issue had been obtained by the prosecution on conditions of confidentiality from several sources, including the United Nations, under article 54.3 (e) of the Rome Statute.

10. In light of the stay of proceedings, the Chamber ordered the unconditional release of Mr. Lubanga, subject to appellate proceedings. On 2 July, the Chamber granted the prosecution leave to appeal the decision staying proceedings. On the same day, the prosecution appealed the release of Mr. Lubanga. On 7 July, the Appeals Chamber suspended the effect of the decision on release while it considered the appeal. At the time of submission of this report, both appeals were pending and Mr. Lubanga remained in custody. On 11 July, the Office of the Prosecutor applied to the Trial Chamber to lift the stay of proceedings. This application was pending at the time of submission of the present report.

11. On 11 July 2008, the Appeals Chamber issued two decisions, addressing issues related to the participation of victims in proceedings and the disclosure of evidence by the defence and by the prosecution.

B. *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*

12. Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui were surrendered by the Democratic Republic of the Congo to the Court on 18 October 2007 and 7 February 2008, respectively. They are each charged with nine counts of war crimes (including murder or wilful killing; cruel or inhuman treatment; using, conscripting and enlisting children; sexual slavery; attacking civilians; pillaging; rape; outrages upon personal dignity and destroying or seizing the enemy's property) and four counts of crimes against humanity (including murder, inhumane acts, sexual slavery and rape), allegedly committed during an attack on the village of Bogoro on 24 February 2003.

13. On 10 March 2008, Pre-Trial Chamber I joined the two cases. On 9 June, the Appeals Chamber denied an appeal of the decision on joinder, confirming that the two cases could proceed together as one.

14. A hearing to confirm the charges against the two suspects began on 27 June 2008 and concluded on 16 July 2008. The victims' legal representatives made opening and closing statements and participated in the course of the proceedings. In the context of the case, 59 victims have participated in proceedings through their legal representatives. A decision on whether or not to confirm the charges should be rendered by 26 September.

15. Throughout the pre-trial phase, the Appeals Chamber issued decisions on a number of interlocutory appeals, including, inter alia, the permissibility of

redactions of information from documents, the participation of victims, the joinder of the cases and requirements of interpretation and translation for the accused.

C. *The Prosecutor v. Bosco Ntaganda*

16. On 29 April 2008, Pre-Trial Chamber I unsealed a warrant of arrest issued on 22 August 2006 against Bosco Ntaganda, alleged Deputy Chief of General Staff for Military Operations of the Forces Patriotiques pour la Libération du Congo (FPLC). The Chamber found there are reasonable grounds to believe Mr. Ntaganda committed the war crimes of enlisting and conscripting children under fifteen and using them to participate actively in hostilities. As of the submission of this report, the warrant had not been executed.

D. Participation of victims and activities of the Trust Fund for Victims in the situation

17. Since the opening of the investigation, 569 victims have applied to participate in proceedings in relation to the situation as a whole (as distinct from particular cases). Of these, 136 have been authorized by Pre-Trial Chamber I to participate in the situation. Seventeen of these victims have been declared indigent and granted legal aid by the Registrar. The Office of Public Counsel for Defence was appointed as ad hoc counsel and filed legal observations in relation to 28 victims' applications to participate in the situation.

18. On 24 January 2008, the Board of Directors of the Trust Fund for Victims, an independent body set up under the Rome Statute for the benefit of victims and their families, notified Pre-Trial Chamber I of its intention to carry out activities in the Democratic Republic of the Congo. In accordance with regulation 50 (a) (ii) of the Regulations of the Trust Fund for Victims, the Chamber assessed whether the proposed activities would pre-determine any issue to be determined by the Court, including jurisdiction and admissibility, or violate the presumption of innocence, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Finding this not to be the case, the Chamber approved the proposed activities.

E. Investigation

19. With the proceedings in the case against Thomas Lubanga, the confirmation of charges hearing of Germain Katanga and Mathieu Ngudjolo and the unsealing of the arrest warrant against Bosco Ntaganda, the Office of the Prosecutor completed a first phase of the investigations in the Democratic Republic of the Congo, focusing on the crimes allegedly committed by leaders of armed groups active in Ituri since July 2002.

20. The Office is now moving on to new cases in the Democratic Republic of the Congo. In the selection process for its next cases, the Office is paying particular attention to the numerous reports of crimes committed by a multiplicity of perpetrators and groups in the North and South Kivu provinces, including reports of horrendous sexual crimes, taking into consideration the views and concerns of

victims and associations. The Office will aim to prosecute those most responsible. Given the particular characteristics of those attacks, the Office will also consider ways to facilitate investigations by the Democratic Republic of the Congo judiciary and contributions to "dossiers d'instruction" against perpetrators. This will require enhanced protection for witnesses and the judiciary. Additional information on allegations of crimes committed in the Kivus continues to be welcomed by the Office.

21. As part of this selection process, the Office is also considering the role of all those who organized, backed or supported the armed groups active in the eastern provinces of the country after 1 July 2002.

F. Outreach

22. The Court adapted its outreach activities in the Democratic Republic of the Congo to reflect the advancements in judicial proceedings. The Court intensified its efforts to raise awareness and increase understanding of the judicial proceedings among the communities most affected by alleged crimes in connection with the cases of *The Prosecutor v. Thomas Lubanga Dyilo*, at a trial stage, and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* at a pre-trial phase. Outreach activities were conducted mainly in villages where victims of the alleged crimes are settled. The Court also addressed concerns related to the situation of the Court's warrant of arrest issued against Jean-Pierre Bemba Gombo, a Congolese national, in connection with a case in the situation in the Central African Republic (see paras. 44 to 54 below).

III. Situation in Uganda

23. The situation in Uganda was referred to the Court by that State Party on 29 January 2004. The Prosecutor opened an investigation into the situation on 29 July 2004.

A. *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, and Dominic Ongwen*

24. Warrants of arrest were issued and later unsealed against five alleged members of the Lord's Resistance Army (LRA) for crimes against humanity and war crimes in 2005. One warrant was rendered without effect in 2007 due to the death of the individual in question.

25. During the reporting period, judicial developments continued to be limited due to the lack of arrest of any suspects. The Court has submitted requests for arrest and surrender to Uganda, the Democratic Republic of the Congo and the Sudan. Pre-Trial Chamber II continued to monitor the status of execution of the arrest warrants. The Chamber requested and received information from the Government of Uganda concerning the status of execution of the warrants. The Chamber also received assessments from the Prosecutor and the Registrar on the status of cooperation with the Court by relevant States and the United Nations for the execution of the warrants of arrest and of the requests for arrest and surrender.

B. Participation of victims and activities of the Trust Fund for Victims in the situation

26. Notwithstanding the lack of substantial activity in the case of *Kony et al.*, Pre-Trial Chamber II continued to receive and dispose of applications of victims to participate in the situation. Since the opening of the investigation, 157 victims have applied to participate in proceedings in the situation in Uganda. On 14 March 2008, the Single Judge of Pre-Trial Chamber II granted seven victims the right to participate in the situation and eight victims the right to participate in the case. On 2 June, the Single Judge granted in part a request from the ad hoc counsel for the defence for leave to appeal this decision. This appeal was pending at the time of submission of the present report. To date, 14 victims have been authorized by Pre-Trial Chamber II to participate in proceedings in the context of the case.

27. On 28 January 2008, the Board of Directors of the Trust Fund for Victims notified Pre-Trial Chamber II of its intention to carry out activities in Uganda. In accordance with regulation 50 (a) (ii) of the Regulations of the Trust Fund for Victims, the Chamber assessed whether the proposed activities would pre-determine any issue to be determined by the Court, including jurisdiction and admissibility, or violate the presumption of innocence, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Finding this not to be the case, the Chamber approved the proposed activities.

C. Investigation

28. The Office of the Prosecutor is conducting important investigative activities and continued to receive reports of more defections and attempted defections within the Lord's Resistance Army. The Office continues to stress the importance of enhancing regional cooperation to increase the ability of members of the Lord's Resistance Army to defect safely as this will further isolate its top leadership.

29. In order to cut off the supply and support network of the suspects, the Office sent requests for information to a number of States to request information on those providing the LRA with supplies, and encouraged States to take action to deter this support from continuing. In May and June 2008, the Office sent an investigation mission to Uganda to collect additional evidence of supply and support with the purpose of identifying the ringleaders of this network.

30. The Office has also collected a range of information on the crimes allegedly being committed by the Lord's Resistance Army in the Democratic Republic of the Congo, the Sudan and the Central African Republic. These alleged crimes increased in the beginning of 2008 as the Lord's Resistance Army made its way from its base in Garamba National Park to the Central African Republic. They primarily include abduction of civilians, including children, for the purpose of recruitment, forced labour, and sexual enslavement. Information indicates that the Lord's Resistance Army is currently attempting to expand its forces by several hundred new "recruits" and so far has brought 200-300 new abductees back to its base in Garamba National Park. The Lord's Resistance Army is also reportedly amassing weapons primarily from weapons caches in Eastern Equatoria in the Sudan but also by attacks on the Sudan People's Liberation Army barracks.

31. The remaining outstanding warrants have yet to be executed and the Office considers that the spate of new attacks by the Lord's Resistance Army increases the urgent need to arrest its leadership. Representatives of the Office, in their contacts with relevant interlocutors, stressed the importance of increasing regional cooperation to execute the arrest warrants. The Office views the current meetings between force commanders from the affected territorial States and the United Nations Organization Mission in the Democratic Republic of the Congo, including the meeting on 3 June 2008 in Kampala, where regional governments are agreeing to joint operations against the Lord's Resistance Army, as encouraging. The Office would encourage States to support this process and to provide additional support for the arrest of the leaders of the Lord's Resistance Army.

D. Outreach

32. The outreach activities conducted by the Court in Uganda at the Pre-Trial stage addressed the concerns of the affected communities, and particularly with respect to the nature of the crimes, the participation of victims, and questions related to peace and justice. Outreach activities mainly targeted the grass-roots populations most affected by the conflict, as well as internally displaced communities mainly in the north and north-eastern parts of Uganda. In addition, new target groups such as youth and teachers were identified for future outreach activities.

IV. Situation in Darfur, the Sudan

33. The situation in Darfur, the Sudan, was referred to the Court by the Security Council in its resolution 1593 (2005) of 31 March 2005. The Prosecutor opened an investigation into the situation on 6 June 2005.

A. *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*

34. On 25 April 2007, Pre-Trial Chamber I issued warrants of arrest against Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"). Due to the lack of arrest and surrender of suspects, there were no new developments during the reporting period in the case of *The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman*.

B. *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*

35. On 13 July 2008, the Prosecutor submitted an application for a warrant of arrest against the President of the Sudan, Mr. Omar Hassan Ahmad Al-Bashir. In the application, the Prosecutor alleged that Mr. Al-Bashir was responsible for genocide, crimes against humanity and war crimes. The application is being considered by the judges of Pre-Trial Chamber I.

C. Participation of victims in proceedings

36. Since the opening of the investigation, 22 victims have applied to participate in proceedings in relation to the situation as a whole (as distinct from particular cases). Of these, 11 have been authorized by Pre-Trial Chamber I to participate in the situation. Pre-Trial Chamber I has continued to consider applications from victims to participate in proceedings in the situation. At the time of submission of this report, one appeal was pending before the Appeals Chamber related to whether individuals could be granted a "procedural status of victims" independent of any specific case.

D. Investigation

37. During the reporting period, the Office of the Prosecutor conducted 15 missions. In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his sixth and seventh reports to the Council on 5 December 2007 and 5 June 2008 on the status of the investigation into the situation in Darfur. The Prosecutor reported to the Security Council that the Sudanese Government continues not to comply with its legal obligations under resolution 1593 (2005).

38. In his briefing to the Security Council on 5 December 2007, the Prosecutor urged the international community, the Council and all United Nations Members to send a strong and unanimous message to the Sudanese Government on the execution of the warrants and highlighted the June 2008 trip of the Council to the Sudan as a crucial opportunity in this regard.

39. The Prosecutor informed the Security Council that the Office was proceeding with its second and third Darfur investigations. The mobilization of the state apparatus to plan, commit and cover up crimes against civilians, in particular the Fur, Massaleit and Zaghawa tribes, is the focus of the second investigation by the Office. He reported that the failure to punish Ahmad Harun, a Minister who commits crimes under guise of humanitarian affairs, is one telling indices of the involvement of high officials.

40. In his report to the Council on 5 June 2008, the Prosecutor specified that present crimes in Darfur include: targeting of civilians in villages, including recent aerial bombardments; looting and destruction of means of livelihood leading to displacement; protracted presence of the Sudanese Government forces and Janjaweed militias in areas attacked, preventing returns; resettlements resulting in the usurpation of internally displaced persons' land; organized insecurity and destitution within and around internally displaced persons camps; rapes; attacks against local leadership including detention, torture and killing; lack of Government assistance, hindering of humanitarian assistance and imposing harsh conditions of life within the camps; impunity of the perpetrators and official denial of crimes adding to the mental anguish of victims. The Prosecutor explained that all of these acts taken together lead to the actual destruction of entire groups.

41. The Prosecutor reported that the third investigation by the Office concerns allegations of rebel crimes, focusing among others on the Haskanita attack against peacekeepers. Preliminary contacts have been made with, and requests for information and assistance have been sent to, the African Union, the United Nations, and to five individual States and other organizations. Preliminary interviews have

been conducted. The Office received information that requires corroboration on the possible responsibility of members of two rebel factions.

E. Outreach

42. Due to the security conditions in the Sudan, outreach activities were conducted in African and European countries in closed meetings with representatives of the relevant social groups in Darfur and Khartoum as well as members of the diaspora. The content of warrants of arrest, the reports by the Office of the Prosecutor to the Security Council and the rights of victims to participate in the proceedings were among the subjects discussed during these interactive sessions.

43. The Court also targeted outreach towards refugees in the camps situated in eastern Chad. Missions to four camps to assess opportunities to implement an action plan were conducted. However, precarious security conditions prevented the launching of planned outreach activities.

V. Situation in the Central African Republic

44. The situation in the Central African Republic was referred to the Court by that State Party on 22 December 2004. The Prosecutor opened an investigation on 22 May 2007.

45. To date one application for participation by a victim has been received in the situation in the Central African Republic.

A. *The Prosecutor v. Jean-Pierre Bemba Gombo*

46. On 23 May 2008, Pre-Trial Chamber III issued a warrant of arrest against Jean-Pierre Bemba Gombo and requested Belgian authorities to provisionally arrest Mr. Bemba. The warrant contained two counts of crimes against humanity (including rape and torture) and four counts of war crimes (including rape, torture, outrages upon personal dignity, and pillaging). On 10 June 2008, the Chamber issued a new warrant of arrest, supplementing the initial counts with two counts of murder as a crime against humanity or war crime.

47. In issuing the warrants, the Chamber concluded that there were reasonable grounds to believe that, in the context of a protracted armed conflict in the Central African Republic from about 25 October 2002 to 15 March 2003, Mouvement de libération du Congo (MLC) forces led by Jean-Pierre Bemba Gombo carried out a widespread or systematic attack against a civilian population which involved rape, torture, outrages upon personal dignity and pillaging. The Chamber further concluded that there were reasonable grounds to believe that Mr. Bemba was responsible for these crimes by virtue of being vested with de facto and de jure authority by the members of the MLC to take all political and military decisions.

48. Mr. Bemba was arrested by Belgian authorities on 24 May 2008 pursuant to the request for provisional arrest. On 10 June 2008, following the issuance of the new warrant of arrest, Pre-Trial Chamber III issued a request for arrest and surrender to the Kingdom of Belgium.

49. Mr. Bemba was surrendered to the Court on 3 July 2008 and made an initial appearance before the judges of Pre-Trial Chamber III. A hearing on the confirmation of the charges against Mr. Bemba is currently scheduled to take place on 4 November 2008.

B. Investigation

50. The Office of the Prosecutor alleges that crimes against the civilian population, namely rape, torture, outrages upon personal dignity and pillaging, were committed in the Central African Republic between the end of October 2002 and 15 March 2003. In particular, the Office alleges that hundreds of rapes were committed and that sexual crimes will be a characteristic feature of the case against Mr. Bemba.

51. The investigation of the Office in the Central African Republic is ongoing and the Office will continue to gather evidence and establish responsibility for the crimes committed in 2002/03.

52. In parallel, the Office continues to closely monitor allegations of crimes committed since the end of 2005 and whether any investigation and prosecution has been or is being conducted with respect to crimes potentially falling under the International Criminal Court's jurisdiction. A letter has been sent to President François Bozizé for the purpose of receiving information concerning possible relevant national proceedings.

53. The Office is pleased that all members of the preparatory committee of the inclusive political dialogue launched by the Central African Republic have acknowledged the principle — enshrined in the Rome Statute — that there can be no amnesty for war crimes and crimes against humanity. Signatories to the comprehensive peace agreement recently signed in Libreville also unanimously and clearly recognized that in accordance with the Rome Statute, there will be no amnesty in the Central African Republic for crimes under International Criminal Court jurisdiction.

C. Outreach

54. Outreach in the Central African Republic was less advanced than in other situations given the relative newness of the situation. There is no permanent and systematic outreach at present in the country. However, recruitment of the outreach team will soon be finalized. The Court has already conducted outreach activities in the country, in particular in connection with the issuance of the warrant of arrest against Jean-Pierre Bemba Gombo. In addition, after the initial appearance of Mr. Bemba, the Registrar of the Court travelled to the Central African Republic and informed representatives of government, non-governmental organizations and civil society about the proceedings in relation to Mr. Bemba and in order to increase awareness about the Court's activities in the Central African Republic. She also participated in media activities while in the country.

VI. Analysis activities

55. The Office of the Prosecutor analyses all information on crimes within its jurisdiction.

56. The Office continued the proactive examination of open sources.

57. As of 21 July 2008, the Office had received 475 new communications under article 15 of the Rome Statute relating to alleged crimes committed during the reporting period. The vast majority of these were dismissed as manifestly outside the jurisdiction of the Court.

VII. International cooperation

58. The Rome Statute obliges its States parties to cooperate fully with the Court in its investigations and prosecutions and provides the basis for the further cooperation of States, international organizations and civil society with the Court. The Court has concluded supplementary cooperation agreements with a number of actors and has continued to take steps to ensure the cooperation needed to ensure respect for and enforcement of its decisions.

A. Cooperation with the United Nations

59. Cooperation with the United Nations continued to be essential to the Court institutionally and in the different situations and cases.

60. The Court received excellent support from the United Nations missions in the field in the exercise of its operations. The United Nations Peacebuilding Support Office in the Central African Republic was instrumental in the early days of the establishment of the Court's activities in Bangui (October 2007). In the Democratic Republic of the Congo, assistance was provided to the Court on the basis of a Memorandum of Understanding between the International Criminal Court and the United Nations Organization Mission in the Democratic Republic of the Congo.

61. In addition to operational cooperation, the public and diplomatic support of the United Nations continued to be important to the Court. Such support increased the likelihood of international cooperation being received from States and other actors. It also strengthened the Court by reaffirming its judicial, non-political mandate and the importance of upholding the rule of law.

62. The Court's Liaison Office to the United Nations in New York continued to facilitate and enhance contacts and information exchange between the Court and the United Nations and its funds, programmes or other bodies, as well as between the Court and permanent and observer missions to the United Nations. These sustained contacts have promoted a better understanding of the work and mandate of the Court, thus contributing to enhanced support for and cooperation with the Court.

63. Pursuant to article 10 of the Relationship Agreement, the United Nations provided facilities and services for the sixth session and the resumed sixth session of the Assembly of States Parties to the Rome Statute, which were held at United Nations Headquarters from 30 November to 14 December 2007 and 2 to 6 June 2008, respectively. The first and second resumptions of the seventh session have

been tentatively scheduled to be held at United Nations Headquarters from 19 to 23 January 2009 and 6 to 13 April 2009, respectively.

64. Another instance of cooperation between the Court and the United Nations is the conclusion of the first phase of the digitization of the entire legislative history of the Rome process, a project which is funded by the Court and has been undertaken by the Secretariat of the Assembly of States Parties and the Codification Division of the Office of Legal Affairs. This data would greatly benefit the Court, practitioners, academics and the public.

B. Cooperation with States, international organizations and civil society

65. The Headquarters Agreement between the International Criminal Court and the host State[1] entered into force on 3 March 2008. This has further enhanced cooperation and facilitated the Court's smooth operations in The Hague. The Headquarters Agreement has provided much needed clarity and certainty on issues which were not adequately covered by the interim arrangements.

66. In executing decisions of the Court, the Democratic Republic of Congo surrendered two individuals to the Court and Belgium surrendered another individual. Other States provided additional cooperation in carrying out the decisions of the Court. Pursuant to article 87 of the Rome Statute, often such cooperation was provided on a confidential basis.

67. The Court saw a significant increase in its work relating to the protection of witnesses. The Court is able to protect witnesses only with effective assistance by the States parties. The Court maintained local protection and response measures in its areas of cooperation in the Democratic Republic of the Congo, Uganda and Chad in collaboration with national and local authorities and other partners, and provided protective measures and security arrangements and other appropriate assistance for witnesses and others at risk on account of testimony when required. The Court's witness protection programme has also created new witness protection concepts in cooperation with local authorities of the situation countries. The Court's staff who work with witness protection issues form part of an international witness protection network and their expertise is consulted by international and national bodies on a regular basis.

68. As of the submission of this report, the Court had concluded 10 agreements with States on the protection and relocation of witnesses, and 2 ad hoc arrangements. The details of these agreements are kept confidential for security reasons. More agreements are necessary as the number of protected persons continues to increase without a commensurate increase in the number of States concluding such agreements. One agreement on the enforcement of sentences was concluded during the reporting period although negotiations continued with several States. As of the submission of this report only two agreements had been concluded between the Court and a State on the enforcement of sentences.

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[1] *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth Session, The Hague, 23 November to 1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, annex II.

69. The Court met regularly with representatives of States, international organizations and civil society to update them on the work of the Court and to discuss items of mutual interest. The Court held two diplomatic briefings in The Hague and one briefing in Brussels. Officials and staff of the Court also met often with representatives of States in New York and provided them with updates on the work of the Court.

70. Cooperation with regional organizations is also important to the Court. Efforts to finalize a memorandum of understanding between the African Union and the Court continued. The Court aims to finalize and sign this agreement as soon as possible in order to strengthen cooperation with the African Union and African States. In May 2008, the first Vice-President of the Court, Judge Akua Kuenyehia, briefed the plenary of the Pan-African Parliament on the Court's activities and had a fruitful exchange of views with the joint sitting of the Committee on Justice and Human Rights and the Committee on Cooperation, International Relations and Conflict Resolution. The Court has also exchanged letters with the European Union with a view to concluding some form of cooperation with the European Union-led peacekeeping force (European Union military operations in Eastern Chad and North Eastern Central African Republic).

VIII. Institutional developments

A. Ratifications and accessions

71. On 1 October 2007, the Rome Statute entered into force for Japan following the deposit of its instrument of accession on 17 July 2007. On 14 March 2008, Madagascar ratified the Rome Statute. On 15 July 2008, Suriname acceded to the Rome Statute. On 18 July, the Cook Islands acceded to the Rome Statute. With the entry into force of the Rome Statute for Suriname and the Cook Islands on 1 October 2008, there will be 108 States Parties to the Rome Statute.

72. In July 2008, the States Parties to the Rome Statute and civil society organizations celebrated the tenth anniversary of the adoption of the Rome Statute on 17 July 2008. To mark this event, celebrations were held in a number of locations including The Hague on 3 July 2008, and New York on 17 July 2008. The Secretary-General addressed the informal meeting of the Assembly of States Parties, held at Headquarters in New York, to commemorate the anniversary. A subregional conference was also held in Benin and was attended by the Registrar of the Court. Another celebration was held in South Africa, where Judge Navanethem Pillay participated on behalf of the Presidency.

73. During the reporting period, the following States became Parties or signatories to the Agreement on Privileges and Immunities of the Court: Mexico, Portugal, the United Kingdom of Great Britain and Northern Ireland and the Netherlands. As of the date of submission of the present report, 63 States had become signatories to the Agreement.

B. Elections

74. During the reporting period, the Assembly of States Parties to the Rome Statute elected three judges to fulfil the remainder of the terms of three judges who had resigned in 2006 or 2007. At its sixth session in December 2007, the Assembly elected Mr. Daniel David Ntanda Nsereko, Ms. Fumiko Saiga and Mr. Bruno Cotte as judges. On 17 January 2008, in accordance with article 45 of the Rome Statute, the three judges made a solemn undertaking to exercise their functions impartially and conscientiously. During the plenary session of judges held on 17 January 2008, Judges Nsereko and Cotte were assigned to the Trial Division and Judge Saiga was assigned to the Pre-Trial Division.

75. On 29 July 2008, Judge Navanethem Pillay submitted her resignation, effective 31 August 2008 following approval by the General Assembly of her appointment by the Secretary-General to the position of United Nations High Commissioner for Human Rights.

76. The terms of office of six judges will conclude on 11 March 2009. An election to fill these vacancies will take place during the first resumption of the seventh session of the Assembly of States Parties, to be held in January 2009.

77. On 13 February 2008, Mr. Bruno Cathala, the first Registrar of the Court, submitted his resignation from the Court in order to take up a position as President of the Tribunal de grande instance d'Evry in the French judicial system. On 28 February 2008, in accordance with article 43 of the Rome Statute and rule 12 of the Rules of Procedure and Evidence, the judges of the Court, meeting in plenary session, elected Ms. Silvana Arbia to succeed him. On 17 April 2008, in accordance with article 45 of the Statute, Ms. Arbia made a solemn undertaking to exercise her functions impartially and conscientiously.

C. Cooperation with the Special Court for Sierra Leone

78. In accordance with a memorandum of understanding concluded on 13 April 2006, the Court continued to provide courtroom services and facilities, detention services and facilities and other related assistance to the Special Court to enable the latter to conduct the trial of Mr. Charles Taylor in The Hague. A unique and unprecedented level of cooperation now exists between the Court and the Special Court. This has been made possible through continuous efforts on both sides to foster proper tools of communication, and to translate the terms of the memorandum of understanding into such practice that facilitates the work of both entities.

IX. Conclusion

79. The past year once again highlighted the importance of international cooperation to the activities of the Court. On the one hand, three individuals were surrendered to the Court, enabling it to begin judicial proceedings against each of them in The Hague. On the other hand, seven warrants of arrest remain outstanding. The credibility of the Court and its impacts depend on its decisions being enforced. While the surrender of three individuals further strengthened its credibility, the outstanding warrants highlight the fact that much more needs to be done.

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International trade and development

Report by the Secretary-General

Summary

The present report reviews recent developments in international trade and the trading system, particularly negotiations under the World Trade Organization Doha Round and their implications for developing countries. The Doha Round and the multilateral trading system stand at a critical juncture, as the recent informal World Trade Organization "mini-ministerial" meeting failed to set the basis for concluding the Round this year. Particular attention is paid to the linkages of trade and the trading system with the achievement of internationally agreed development goals, particularly the Millennium Development Goals, and to persistent and emerging challenges of global economy.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 62/184, in which the Secretary-General, in collaboration with the secretariat of the United Nations Conference on Trade and Development (UNCTAD), is requested to report to the Assembly at its sixty-third session on the implementation of that resolution and on developments in the multilateral trading system.

II. Trends in international trade and development

2. Robust output and export growth worldwide have marked recent years, driven particularly by the growth in productive capacities in many parts of the developing world. However, global demand and supply shocks on account of finance, fuel and food prices have cast uncertainties over the world economy. World growth in 2008 is now expected to be lower than in previous years. The economic slowdown and emerging challenges could risk undermining the development and poverty-alleviation prospects of developing countries and progress towards the Millennium Development Goals. With increasing economic uncertainty, protectionist and anti-globalization sentiments have also re-emerged and concerns over adjustment intensified.

3. A global financial crisis, prompted by the collapse of subprime loans in the United States of America, has substantially reduced liquidity in global credit markets, and the resulting higher interest rates have reduced investment worldwide. The depreciation of the dollar and the economic slowdown in the United States have decreased global import demand. The spike in energy and commodity prices has fuelled global inflation. The spot price of crude oil rose from $50 a barrel in January 2007 to $147 in July 2008, before retreating to $115 in August. Speculation has amplified price variations, as portfolio investments have shifted to commodity markets in search of higher returns. High energy prices have made agricultural production more expensive by raising the cost of inputs, including fuel, fertilizers, pesticides, seeds and transport. Subsidies for biofuels, including in developed countries, have contributed to rising prices by diverting production away from agriculture. Containing inflationary pressures without discouraging growth has become an increasing concern of central banks.

4. The dramatic rise in global food prices and the depletion of cereal stocks, particularly of staples, has created a host of humanitarian, socio-economic and developmental challenges. Wheat, rice and soybean prices have increased by 40 to 60 per cent since early 2007, although prices have stabilized lately. The cereal import bill of low-income net-food importing countries has doubled over the past five years. Food prices are expected to remain significantly higher than their 2004 level despite the deployment of short-term measures, owing to multiple deep-rooted causes, including changing demographics, consumption patterns and growing impacts of climate change and desertification and failures of national and international development policies and measures that have historically provided disincentives to agricultural production in many developing countries. Agricultural subsidies in developed countries have distorted international markets and weakened agricultural production in developing countries. The recent imposition of export taxes and restrictions has provided short-term relief for domestic consumers but

could risk aggravating situations in other countries and discourage longer-term supply responses.

5. The global food crisis has the potential to reverse the progress made towards the achievement of the Millennium Development Goals, particularly the eradication of extreme poverty and hunger (millennium development goal 1). Hunger needs in over 37 developing country, 20 of which are least developed countries, require urgent attention. The crisis may add another 100 million people to the existing 854 million suffering from extreme poverty and hunger. Reduced availability of food also compromises children's health (goal 4), education (goal 2) and maternal health (goal 5). Estimates indicate that if current price levels are sustained, annual international aid in the order of $25 billion to $40 billion is necessary to help enhance food production in developing countries. The crisis thus requires a comprehensive and coordinated response, comprising emergency responses as well as scaling up productivity-enhancing safety nets and agricultural investments. The Doha Round could contribute to medium- or long-term solutions by tackling the systemic distortions in the international food market, although the effects of a successful Round — with the growth in global production estimated at -2 to 2 per cent, depending on the sector — may be small compared with the magnitude of recent price increases.[1]

6. Climate change represents a long-term human challenge, particularly for developing countries. Response measures taken multilaterally or unilaterally, however, could place medium-term constraints on the production possibilities of countries and incur adjustment costs for developing countries. Multilateral cooperation has been strengthened by the recent decision taken at the United Nations Climate Change Conference in Bali in December 2007 to launch negotiations on strengthened cooperation on the reduction and mitigation of greenhouse gases. It is estimated that by 2030 developing countries will require $28 billion to $67 billion in funding to adapt to climate change. On the other hand, various environmental standards, elaborated on the basis of carbon intensity and energy efficiency of goods and services traded, could incur high adjustment costs for developing countries that have traditionally relied on emission-intensive production processes and methods. The multilateral trading system can facilitate trade in environmental goods and services, and discipline some trade-related measures taken for environmental purposes, such as border tax measures, and trade-restrictive standards and non-tariff barriers.

7. Against the backdrop of growing economic uncertainties, 2007 marked the fourth consecutive year of global economic growth. World output expanded by 3.8 per cent. Developing countries led the expansion, growing at a robust rate of 7.3 per cent, compared to 2.5 per cent for developed countries, where weak growth is projected for several quarters to come. World merchandise exports expanded by 14.4 per cent, at a slower pace than in the previous year, to $13.8 trillion, and exports of services grew by 18.1 per cent, to $3.3 trillion. Developing countries' merchandise exports grew by 15.2 per cent and their share in world merchandise exports increased from 37.3 to 37.5 per cent, while their share in world exports of services remained unchanged, at 25.4 per cent. Least developed countries merchandise exports grew by 21.2 per cent, to increase their world share from

[1] S. Polaski, *Winners and Losers: Impact of the Doha Round on Developing Countries* (Carnegie Endowment Report. March 2006).

0.85 to 0.91 per cent, while their share of world services trade remained constant at 0.5 per cent.

8. The most dynamic growth in merchandise exports among developing regions was recorded in Asia (16.3 per cent), followed by Latin America (12 per cent) and Africa (10.7 per cent). China recorded the fastest export growth, 25.7 per cent, while India's exports grew by 20.3 per cent, and Brazil's by 16.6 percent. From 2000-2006, exports of primary commodities grew faster than those of manufactured goods, while the share of ores and metals in their merchandise exports rose from 4 to 7 per cent, and fuels from 20 to 22 per cent.

9. South-South trade continues to accelerate, and accounted for 46 per cent of total developing country exports, or 17 per cent of world merchandise exports in 2006. Asia accounted for 85 per cent of South-South trade, while Latin America and Africa accounted for 10 and 5 per cent, respectively. South-South trade remains largely intraregional in nature, while increasing opportunities exist for interregional trade. Given the rapid proliferation of regional trade arrangements, over half of global trade is estimated to take place among regional trade arrangement partners. Nearly 60 per cent of the exports of high-income Organization for Economic Cooperation and Development (OECD) countries are directed to regional trade arrangement partners. This share is lower for developing countries, in the range of 30 to 40 per cent.

10. Tariff protection has continued to fall over the past decade.[2] Global most favoured nation tariffs averaged 9.4 per cent in 2007, a fall from 11.7 percent during the period 2000-2004. From, 2001 to 2007, average most favoured nation tariffs imposed by developed countries on low- and middle-income country exports declined from 11.1 to 6.8 per cent for agriculture, from 4.0 to 3.4 per cent for industrial products and from 8.5 to 5.9 per cent for textiles and clothing. The effectively applied tariffs (including preferences) faced by least developed country exports in developed countries fell from 2.3 to 1.6 per cent for agriculture, from 2.9 to 1.4 per cent for industrial products and from 6.7 to 4.7 per cent for textiles and clothing. Relatively high tariffs and peaks, and tariff escalation, remain in developed countries on products exported by developing countries, including agricultural products and textiles and clothing.

11. An increasing proportion of trade enters markets at a zero tariff rate either on a most favoured nation or preferential basis. Globally, duty-free trade has increased (34 per cent on average) in all regions over the past decade, to about 40 per cent.[3] From 2000 to 2005, the percentage of developed countries' imports admitted duty-free increased from 63 to 76 per cent for developing countries, and from 75 to 82 per cent for least developed countries. While half of total United States imports and 63 per cent of total European Union imports in 2006 were imported duty-free on a most favoured nation basis, only 29 per cent of United States imports from developing countries are duty-free on that basis, as these countries tend to export the more protected goods. However, 34 per cent of United States imports from developing countries and 16 per cent of European Union imports from developing countries were eligible for some form of preferences reserved for developing countries.

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[2] World Bank, *World Trade Indicators 2008*.

[3] Ibid.

12. Agricultural support estimates in OECD countries fell slightly, from $376 billion in 2005 to $365 billion in 2007, or from 1.05 to 0.89 per cent as a share of gross domestic product (GDP). The proportion of trade-related capacity-building in total official development assistance declined from 4.4 per cent in 2001 to 3.5 per cent in 2005, against the backdrop of insufficient progress towards the target of 0.7 per cent of gross national product by 2015, consistent with the Monterrey Consensus.

13. As regards services, developing country exports remain relatively concentrated, as the top five exporters supply half of all exports of services, and the top 15 exporters 75 per cent. Asia accounted for three quarters of developing country exports of services. In 2007, the most dynamic exporter was Africa, with export growth of 19.8 per cent, followed by Asia (18.9 per cent) and Latin America (13.0 per cent). Least developed countries' exports of services grew by 11.4 per cent. Travel and transport represented two thirds of developing country exports of services, while business, information and communications, and financial and insurance services accounted for nearly one third. Countries with economies in transition expanded their exports of services by 30.5 per cent. South-South trade in services is estimated to account for 45 per cent of developing country exports of services, or 11 per cent of world exports of services. As in the case of merchandise, there is a strong bias towards intraregional trade.

14. In 2007, total foreign direct investment (FDI) inflows to developing countries reached a record level of $471 billion, or one quarter of total world FDI inflows. This was driven by an increase in greenfield investment and in production abroad by transnational corporations. Brazil, China, India and South Africa accounted for half of all FDI inflows to developing countries. Growing economic uncertainties in 2008 are expected to result in decline by some 40 per cent of FDI inflow to developing countries, to $282 billion.

15. Labour mobility and migration contribute to fostering a trade, investment and development link between countries of origin and of destination. Over 200 million people live and work outside their country of origin, and global remittance flows, which reached $318 billion in 2007, are an important source of income and foreign exchange. Maximizing net benefits for both sending and receiving countries through "co-development" partnership is important, as are channelling remittances into public and productive investment and ensuring circular migration.

16. The Accra Accord, adopted at the twelfth session of UNCTAD, in April 2008, recognizes that in order to make globalization a positive force for all, with its benefits shared equitably, a comprehensive and coherent set of development policies and initiatives is required, and that ensuring the effective, qualitative and beneficial participation of all countries, in particular developing countries, in the international trading system is a critical challenge, but could also generate opportunities (para. 62). It recognizes that the interplay between the economic and social policies and environmental dimensions of globalization should be tailored to the specific needs and circumstances of each country. It also calls upon all World Trade Organization members to uphold and reiterate their commitment within the organization to promote a well-functioning, rules-based, open, equitable, predictable and non-discriminatory multilateral trading system that promotes development (para. 63). It stresses that they must demonstrate their shared interest in, and the political will to achieve, the successful completion of the Doha Round of

negotiations and the full realization of its core agenda, in line with its overall development dimension.

17. Addressing emerging global challenges and achieving the Millennium Development Goals requires the different strands of global partnership — trade, aid, finance, investment and technology — to all work in complementary ways to reinforce national benefits. An essential component of Millennium Development Goal 8, on global partnership for development, is to develop further an open, rule-based, predictable, non-discriminatory trading system. A high-level event on the Millennium Development Goals, and the Doha Review Conference on financing for development, would help build consensus on the efforts needed to achieve that goal. Halfway towards the 2015 target date for achieving the Millennium Development Goals, efforts are needed to improve market access conditions for developing country trade, reduce distortion in agricultural trade and substantially increase international support to help developing countries benefit from international trade.

III. Developments in the multilateral trading system

18. The Doha Round, under way since 2001, has entered its seventh year. It stands at a critical juncture, as negotiations were aimed to conclude by the end of 2008. The political cycles in some major countries are expected to render negotiations more complex in 2009. Focus has been given to establishing full modalities for reduction commitments in agriculture and non-agricultural market access. Achieving a commensurate level of progress in other areas of negotiations, such as services, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), rules and trade facilitation, has also been given importance in achieving an overall balance within a single undertaking. Following the first draft modalities on agriculture and non-agricultural market access, issued in July 2007, revised texts on both subjects were issued in February, May and July 2008 to form the basis of discussion.

19. An informal World Trade Organization "mini-ministerial" meeting, convened from 21 to 30 July 2008 with the participation of some 40 ministers and senior officials, essentially to establish modalities on agriculture and non-agricultural market access, failed to achieve a much-needed breakthrough. The meeting was aimed at resolving key outstanding issues in the negotiations through intersectoral "horizontal" negotiations at the higher political level. Such outstanding issues included the extent of reduction in the overall trade-distorting domestic support for agriculture in developed countries, the extent of reduction in agricultural tariffs in developed countries, flexibilities for developing countries in agricultural tariff reduction and the extent of tariff cuts for industrial products in developing countries. It was hoped that resolutions on these issues would galvanize agreement in agriculture, non-agricultural market access and other areas. A "signalling conference" on services, where signals were exchanged among 32 participating countries on possible improvements in services offers, was held during the meeting to inject impetus into negotiation on services. The proposal to bind the European Union's new banana tariffs at 114 euros per ton (from the existing 176), which arose from the long-standing dispute between the European Union and Latin American banana producers, were also discussed. The three TRIPS-related issues (multilateral register for geographical indications for wines and spirits, extension of stronger

geographical indication protection for all products and protection of biodiversity and traditional knowledge through the patent system) were also addressed, as several countries attached special importance to them.

20. Despite the significant progress made on many core issues, the small-group discussion among Australia, Brazil, the European Union, China, India, Japan and the United States of America failed, unexpectedly, on the issue of the special safeguard mechanism in agriculture. The question was how easy it should be for developing countries to invoke a safeguard action that could raise applied tariffs above the existing legal ceiling rates ("bound rates") to counter an increase in imports. The collapse of the negotiations meant, among other things, that a more ambitious and expeditious reduction of cotton subsidies, sought by African countries, was not addressed by ministers. Although a convergence of positions on 18 out of the total 20 core issues essential for modalities on agriculture and non-agricultural market access was reported, it was felt that differences persisted on some of the issues within the package. There was a perceived imbalance in the level of concessions sought from developing countries, particularly in the light of the principles of special and differential treatment, including on the proposed extent of industrial tariff cuts by developing countries and of farm subsidy-reductions by developed countries. As regards process, while the need for the small-group negotiations was largely recognized, given that wider group discussions had failed to produce results, concern remained on the part of countries outside the small-group process because of what they perceived as the lack of full inclusiveness and transparency. The outcome of that process would have required multilateral endorsement by consensus, as, ultimately, the Round's outcome needs to be adopted by the World Trade Organization Ministerial Conference, involving all members.

21. The failure to set the basis for the concluding stage of the negotiations has made it impossible for the Round to be concluded by the end of 2008, and more difficult to resuscitate in 2009. Another complicating factor is the lack of trade promotion authority for the United States Administration. Its renewal is regarded as essential for that country's credible engagement in the negotiations. There is concern that the Round might be put on hold for some time, possibly two years, while more and more calls are being made to fully resume the negotiations at an earliest date possible. Early harvest of some of the deliverables has been suggested, while the principle of "single undertaking" means that all elements remain open until all components are settled. Suggestions are also made to harvest development deliverables on a fast-track basis. Intensive consultations are under way, including by the Director-General of the World Trade Organization to determine ways forward and possible resumption.

A. Agriculture

22. Agricultural negotiations have been conducted with regard to market access, domestic support and export competition. The central issues noted were the extent of the overall trade-distorting domestic support reduction, tariff cuts in developed countries and flexibilities for developing countries. The mini-ministerial meeting also addressed cotton-specific subsidies, special safeguards mainly for developed countries, "sensitive products", tariff ceilings, "special products" and the special safeguard mechanism. Other outstanding issues included preference erosion, tropical products, tariff simplification, tariff rate quotas that allow for imports at

low tariff rates up to a specified quantity, duty-free and quota-free market access for least developed countries, product-specific subsidies, export competition and export restriction.

23. UNCTAD estimates indicate that the most significant impact of the Round would result from a reduction in the European Union average applied tariffs from 21 to 12 per cent and Japanese tariffs from 31 to 17 per cent. Developing countries applied agricultural tariffs would be reduced to a limited extent, possibly from 17 to 15 per cent. A significant increase in developed-country imports of oilseeds, beef, bananas, other tropical fruits, citrus and a range of other products is expected. Net-food importing developing countries and least developed countries would be worse off because of the rise in food import prices and the erosion of preferential market access.

24. On market access, a tariff-cutting formula that classifies tariffs into four bands and applies larger cuts for higher tariffs ("tiered formula") had been agreed. Developing countries would undertake a cut amounting to two thirds of the cut of developed countries in the corresponding band. Some 30 developing countries would apply the tiered formula, while the 48 small and vulnerable economies would apply a more lenient formula cut or an overall average cut. Least developed countries are exempted from any cut. The extent of cuts for developed countries' high tariffs remained unresolved, as they tend to be import-sensitive. This was proposed to be 70 per cent at the mini-ministerial meeting. Since the line-by-line reduction does not guarantee a priori the significant level of overall average reduction, the target minimum average cut for developed countries was set at 54 per cent. For developing countries, the maximum average cut was set at 36 per cent so that the tiered formula does not lead to disproportionately deep cuts, as developing countries tend to maintain high initial bound tariffs that are subject to larger cuts.

25. The level of market access improvement is dependent on exceptions to the formula. The designation, "sensitive products", available to all countries to provide flexibility to a limited number of protected products, allows the tariff cuts to be reduced to one third, one half or two thirds of the normal formula cuts if the relevant tariff rate quota is increased. The number of sensitive products for developed countries was proposed to be 4 per cent of agricultural tariff lines, and the extent of tariff rate quota expansion would be 4 per cent of domestic consumption. Countries with a high-tariff structure are entitled to an additional 2 per cent subject to tariff rate quota expansion. While sensitive products can undermine potential welfare gains, tariff rate quota expansion is important in compensating for the loss. The proposed limit on maximum allowable tariffs after the formula cut ("tariff cap") at 100 per cent would not apply to sensitive products but would apply to the remaining agricultural products, with the exception of 1 per cent of tariff lines. This would impose constraints for countries having high agricultural tariffs on a number of products.

26. Developing countries with vulnerable and small-scale farmers have attached particular importance to a special allowance available only to developing countries — for special products — to promote food security, livelihood security and rural development. This is particularly relevant given the current food crisis. The designation "special products" allows for a gentler tariff reduction, including no reduction, for a limited number of products. Agricultural exporters were concerned that an overly permissive special products arrangement could hamper their market

access improvements in developing country markets. The mini-ministerial meeting discussed the proposal whereby the maximum number of eligible products is 12 per cent of agricultural tariff lines; 5 per cent would be eligible for zero tariff cuts, and the overall average cut would be 11 per cent. A coalition of some 100 developing countries thus called for greater product coverage and a lesser minimum average cut to shield a greater number of products from fuller market opening.

27. The special safeguard mechanism is another instrument of particular importance to developing countries for protecting vulnerable farmers in case of a rapid increase in cheap imports that could adversely affect the subsistence needs of poor farmers. This issue was the apparent cause of the mini-ministerial setback. The special safeguard mechanism allows developing countries to temporarily increase tariffs in response to an import surge or fall in import prices. Key questions are whether, to what extent and under which conditions remedial tariffs can exceed pre-Doha bound rates and, on the other hand, how a special safeguard mechanism can be made genuinely operational for developing countries if there is an a priori ceiling constraint on possible remedies. In the case of an import surge, the July 2008 draft modalities text ("July text") suggested that a different amount of remedial duties might be imposed on existing tariffs according to the level of import surges within the general ceiling limits of the pre-Doha bound rates. Developing countries would be entitled to exceed this ceiling rate by the higher of 15 percentage points or 15 per cent of the new bound rates if limited to two to six products in any given period. Small and vulnerable economies and least developed countries would be eligible for less restrictive higher ceilings.

28. The mini-ministerial meeting discussed limiting the availability of such a ceiling level higher than the initial bound rate only to the case of high import surges (i.e., greater than 140 per cent). The proponents of the special safeguard mechanism found this trigger level too high, making the instrument effectively non-operational. They argued that by the time imports increase by as much as 40 per cent, domestic production could already have been severely damaged. Agricultural exporters argued that the lower trigger level could allow the imposition of additional tariffs even in the event of normal import growth, and the impact of price increases could be substantial for bulk commodities sold at a small price margin. The coalition of some 100 developing countries supporting the special safeguard mechanism called for a lower trigger level and higher additional duties to make the mechanism more easily available at an earlier stage to effectively counter import increases.

29. Some developing countries groupings have competing interests over the issues of preference erosion and tropical products. Those dependent on preferential access to developed countries, such as African, Caribbean and Pacific States in the European Union market, seek to postpone and lower tariff reductions in preference-granting countries to attenuate the erosion of preference margins. In contrast, exporters of tropical products without preferential market access, mainly from Latin America, seek deeper and faster tariff reductions to expand most favoured nation market access opportunities for their exports. The issue is that two thirds of products determined to be vulnerable to preference erosion overlap with those classified as tropical products, including bananas, sugar, cut flowers and tobacco. Both parties have thus sought to reduce the number of overlapping products, including taking into account the setting of new European Union tariffs on bananas at 114 euros per ton, which has been proposed as a solution to the long-standing legal dispute between European Union and Latin American banana producers.

30. The mandated substantial reduction of trade-distorting domestic support is being pursued through specific cuts in the individual components of trade-distorting subsidies, and through cuts in the overall trade-distorting domestic support as a whole. These efforts would not lead to substantial cuts in actual spending on domestic support, as the reduction is from a ceiling level that is often significantly higher than actual spending level. It would, rather, limit the scope for discretionary policy changes and improve the structure of commitments for future rounds. A central issue in domestic support was the new ceiling level for the United States of America, particularly given its 2007 Farm Bill, which maintained much of the commodity support. The mini-ministerial meetings discussed a 70 per cent cut for the United States, which would reduce its overall trade-distorting domestic support ceiling from $48.2 billion to $14.5 billion. This is, however, above its assumed current spending, which is low because of high commodity prices.

31. A more substantial and faster reduction of cotton subsidies proposed by African countries was not addressed at the mini-ministerial meeting. The major issue is the treatment of United States domestic support for cotton, which is in part dependent on the general disciplines, still outstanding, on product-specific domestic support. The United States is the world's second largest producer of cotton, after China, and the leading exporter. According to some commonly quoted estimates, the removal of United States subsidies would increase world prices by 10 to 12 per cent, although such an estimate is sensitive to assumptions on supply responses.[4] UNCTAD estimates indicate that removing $3 billion of United States subsidies could generate welfare gains of about $40 million for West African countries.

B. Non-agricultural market access

32. Tariff protection for non-agricultural products is generally low in developed countries, despite tariff peaks and high tariffs in some sectors, including textiles and clothing. Tariffs are higher in developing countries but, owing mainly to unilateral liberalization, applied rates are often lower than bound rates, leaving tariff overhang between the two. Given that manufactures account for two thirds of imports, developing countries are concerned that an abrupt opening of their industrial sectors to international competition risks causing de-industrialization, government revenue loss or lesser flexibility in tariff policies. Import duties represent on average 19 to 30 per cent of total tax revenue in low-income developing countries.

33. Non-agricultural market access negotiations have proved to be controversial. Non-agricultural market access tariff reduction is based on harmonizing the "Swiss formula", which reduces higher tariffs to a greater extent. Twenty-seven developing countries would apply the formula while other developing countries are subject to different tariff-cutting methods: the 12 developing countries with low binding coverage would increase their binding coverage at an average rate not exceeding 30 per cent. Most of the 33 small and vulnerable economies would bind their tariffs at proposed average tariff rates of 18 to 30 per cent. Least developed countries are exempt from any tariff cut. Major issues of contention pertain to the extent of tariff reduction by developing countries, terms of developing country flexibilities,

[4] Daniel A. Sumner, "A quantitative simulation analysis of the impacts of US cotton subsidies on cotton price and quantities", available at http://www.mre.gov.br/portugues/ministerio/sitios_secretaria/cgc/analisequantitativa.pdf.

including the proposed "anti-concentration clause", and sectoral tariff negotiations and harmonization. Other outstanding issues include a formula for small and vulnerable economies, preference erosion, special flexibilities for some individual countries, duty-free and quota-free market access for least developed countries and non-tariff barriers.

34. The July text linked the Swiss formula coefficients (which are equal to maximum ceiling tariffs) with differing degrees of flexibilities, thereby establishing tradeoffs between the two. Accordingly, developing countries opting for a higher coefficient would apply lower or no flexibilities in moderating formula cuts. Developing countries find such a linkage contrary to the Doha mandate and dismissive of their sensitivities. Developing countries question the increased scope of flexibilities that may exclude a substantial proportion of sensitive developed country products.

35. A central issue was the question of whether the proposed tariff-cutting modalities fully meet the agreed principles of "less than full reciprocity" and "comparably high level of ambition in market access" between agriculture and non-agricultural market access. The current non-agricultural market access proposal would effectively cap developing country tariffs at the level of 20 to 25 per cent, implying that developing countries would have to make higher average cuts than developing countries, even though they would maintain higher tariffs than developed countries after the formula cuts. Developing countries pointed to a proposed tariff cap at the level of 100 per cent in agriculture in support of a higher ceiling level for their industrial tariffs. Developing countries remained concerned about possible adverse development implications and adjustment costs of deep tariff cuts. Developed countries were concerned that the proposed cuts would not generate real market access and new trade flows in developing countries.

36. "Flexibilities" from the formula for developing countries consist in applying either half the formula cut or no cut for a certain proportion of industrial tariff lines, with the condition that import volumes accounted for by those tariff lines do not exceed a certain maximum amount. Developing countries are concerned over the so-called "anti-concentration" clause, which pre-empts the exclusion of entire product categories from the formula cut. Some members of customs unions have sought greater flexibilities to prevent steeper tariff cuts applied by one member from inducing the same deep cuts for other members that otherwise would not be required (e.g. least developed countries) owing to the existence of common external tariffs. Such concern was raised in respect of the Southern African Customs Union and the Common Market of the South.

37. Greater emphasis has been given recently to sectoral negotiations that seek to reduce and harmonize tariffs in specific sectors over and above a formula cut, as the general level of ambition through the Swiss formula remains unresolved while developed countries seek deeper liberalization in growing markets, such as the chemical, electronics and automobile markets. While the developing country participation in sectoral negotiations had been agreed on a voluntary basis, a linkage between participation in the sectoral initiatives and the level of coefficients had been proposed. Developing countries were concerned that such a linkage might render the sectoral negotiations almost mandatory. The mini-ministerial meeting considered the proposal that developing countries would participate in negotiating

the terms of at least two sectoral negotiations and that their participation in the final sectoral initiatives would be compensated with the increase in Swiss coefficients.

38. As in agriculture, for preference-dependent countries, the erosion of preferences in their export markets is a major concern. The sectors in which they most benefit from deep preferences are those where most favoured nation tariffs are high but would be reduced to a greater extent owing to the harmonizing Swiss formula, such as the clothing and fish sectors. A limited number of products determined to be vulnerable to preference erosion in the European Union and United States markets would be subject to longer implementation. In that regard, for some Asian developing countries and least developed countries, a shorter period is applied to a limited number of clothing products that are not covered by certain preferential schemes, and thus would be disproportionately affected if most favoured nation tariff reduction were delayed. Preference erosion can be more significant for those products that would be included in sectoral initiatives leading to deeper tariff reduction. There is a possibility that those tariff lines listed for preference-erosion products could be excluded from sectoral negotiations so as not to override preference erosion.

39. Addressing non-tariff barriers remains important for developing countries, as they tend to face higher non-tariff barriers than developed countries. Market access alone is not sufficient to ensure the realization of export opportunities resulting from the Doha Round and effective market entry for developing country exports. Seven specific "horizontal" and "vertical" non-tariff barrier proposals, including on the facilitation of dispute resolution for non-tariff barriers, would be given particular attention. Other listed non-tariff barrier proposals include those for chemical products, electronics, labelling on textiles, clothing and footwear. The list does not refer to the proposal on export taxes.

C. Duty-free and quota-free market access for least developed countries

40. The duty-free and quota-free market access decision agreed at Hong Kong (China) remains a key issue for least developed countries. The decision called for granting duty-free and quota-free treatment to at least 97 per cent of products by 2008 or the start of the Doha implementation period, with the remaining 3 per cent to be progressively liberalized thereafter. The issue remains of how to progressively achieve 100 per cent coverage, by when, and how to ensure that rules of origin are "transparent and simple". Three per cent of tariff lines could affect a significant proportion of least developed countries exports. In agriculture and non-agricultural market access negotiations, least developed countries have sought to clarify the time frames and procedures for achieving these goals and monitoring the implementation, including of rules of origin.

41. Many developed countries had already met 97 per cent coverage in 2005, while others had yet to do so. Major improvements were reported in Japan and Switzerland, which recently expanded their product coverage for duty-free and quota-free treatment to meet the 97 per cent threshold. Furthermore, India and China have taken major steps to improve market access for least developed countries. Least developed countries had submitted a proposal on rules of origin calling for the use of harmonized rules based on value addition methods and addressed the issue

bilaterally. The non-agricultural market access modalities urge countries to use this proposed model. Ongoing reforms of rules of origin, such as in the European Union, are expected to address some of the least developed countries' concerns. Least developed countries have stressed the need for adapting rules of origin to their production and export profiles.

D. Services

42. As the services sector represents 52 per cent of GDP and 35 per cent of employment in developing countries, and given its multifaceted nature, well-functioning services sectors are essential in meeting Millennium Development Goals, particularly in respect of eradicating poverty. Universal access to education, health, water and environmental services is essential for meeting the goals related to universal primary education (Millennium Development Goal 2), child mortality (goal 4), maternal health (goal 5) and safe drinking water (goal 7). The role of women in the supply and consumption of services makes the sector relevant to gender empowerment (goal 3). UNCTAD undertakes comprehensive work on services, including on universal access to services.

43. Developing countries in general aim to realize through services negotiations adequate pacing and sequencing of national policies, reform and liberalization, including for supply capacity-building and institutional and regulatory frameworks, as well as securing enhanced market access and entry in sectors and modes of supply of their export interest. Some 71 initial and 31 revised offers have been submitted. The quality of offers is felt to need improvement in terms of the depth and breadth of commitments, consistent with the development objectives of General Agreement on Trade in Services, articles IV and XIX. Since 2006, plurilateral negotiations are conducted in addition to the bilateral negotiations. Twenty-one plurilateral requests addressed key sectors, all modes of supply and most favoured nation exemptions.

44. The signalling conference held during the mini-ministerial meeting was aimed at boosting market access negotiations through exchange of indications of possible offers (and requests) with regard to new and improved market access for services in response to bilateral and plurilateral requests. Some 32 participants indicated their possible offers on a conditional basis, yet to be confirmed in the revised offers.

Services signalling conference

The signals exchanged addressed all the major services sectors, including business, postal and courier, telecom, construction, distribution, environmental, financial, transport (particularly maritime) and energy-related services. Signals were made regarding the removal of limitations with respect to mode 3 in sectors such as postal and courier, telecom, distribution, environmental, banking, insurance and energy-related services. As regards mode 1, discussions centred on business and distribution services. On mode 4, the signals were made on sector-specific improvements (such as business services), as well as across-the-board improvements in all relevant categories (such as intra-corporate transferees, business visitors, contractual service suppliers and independent professionals). Also indicated were the extension of periods

of stay; clarification, reduction or elimination of economic needs tests; removal of definitional uncertainties; and adjustment of current entries to prevailing scheduling conventions in exchange for improved developing country commitments in such sectors as telecom, finance, environmental and distribution services. The importance of negotiations on domestic regulations was noted. Developing countries were largely disappointed with the lack of added value in offers on modes 4 and 1.

45. A services text, "Elements required for completing the services negotiations", was under discussion to establish balance among market access negotiations on agriculture, non-agricultural market access and services. The draft text provided that World Trade Organization members, to the maximum extent possible, would respond to bilateral and plurilateral requests by making deeper and/or broader commitments, including, where possible, reflecting substantially current levels of market access and national treatment, and providing new market access and national treatment, in areas where significant impediments exist, particularly sectors and modes of export interest to developing countries, such as modes 1 and 4. Such commitments should be commensurate with the level of development, regulatory capacity and national policy objectives of individual countries. The date for the submission of revised offers was proposed to be set for 15 October, and that for the final draft schedules for 1 December.

46. Developing countries initially questioned the merit of the services text, as the negotiating guidelines already existed (adopted in 2001, supplemented by the July 2004 framework agreement and annex C of the 2005 Hong Kong Ministerial Declaration). Certain elements of the text were also controversial, such as reference to "current levels of market access and national treatment". Concerns also existed on development flexibilities, structure of the General Agreement on Trade in Services and the regulatory framework. The text made no reference to some mandated elements of the negotiating guidelines, including the assessment of trade in services in the light of objectives of article IV of the General Agreement on increasing participation of developing countries in trade in services, the consideration of the extent to which article IV is being implemented and the suggestion of ways and means of promoting the goals established therein, and an evaluation, before the completion of the negotiations, of the results attained in terms of the objectives of article IV.

47. Least developed countries have called for establishing a mechanism for granting special priority through predictable and enforceable preferential access for least developed countries and their mode 4 request, in accordance with the least developed country modalities. The July version of the draft text provides that a waiver available to all World Trade Organization members from most favoured nation obligations in respect of preferential treatment benefiting all least developed country members offers the more satisfactory outcome and that specific principles and characteristics of such a waiver would be completed before the submission of a revised offer.

48. Developing countries continue to seek commercially meaningful mode 4 commitments where gains are estimated at $150 billion to $250 billion, especially from movements of low-skilled workers. To date, improvements in revised offers

have been limited. Developed countries' improvements mainly addressed high-skilled movements and those tied to mode 3, such as intra-corporate transferees and business visitors. Developing countries have called for commercially meaningful commitments, including the inclusion of categories de-linked from mode 3, eliminating quotas, economic needs tests and wage parity requirements, ensuring transparency on immigration laws and flexible qualification requirements (e.g., accepting competence and experience instead of formal degrees).

49. Under article VI:4 of the General Agreement on Trade in Services, disciplines on domestic regulation are being negotiated to ensure that qualification requirements, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. The main challenges remain striking a balance between the need for national regulatory autonomy and international disciplines to eliminate unjustifiable market access barriers, particularly for mode 4. Developing countries have emphasized the importance of flexibility for development policies and the right to regulate. The so-called "necessity test" directly affects the balance between market access and the right to regulate. While some see the notion as central to meaningful disciplines, others consider it an excessive constraint on Governments' regulatory discretion. The revised text avoids the reference to "necessity" but uses a similar formulation by requiring, for instance, that licence and qualification procedures "do not in themselves constitute a restriction on the supply of services". Little progress has been achieved on negotiations on General Agreement on Trade in Services rules.

E. Special and differential treatment and implementation issues

50. Special and differential treatment and implementation issues remain essential to the Doha Round's development dimension, addressing imbalance in the multilateral trading system. The initial 88 agreement-specific special and differential treatment proposals have seen little progress in making them more precise, effective and operational, with progress made on only five least developed country-specific proposals, including duty-free and quota-free market access for least developed countries. Discussions were held on 7 of the 16 remaining special and differential treatment proposals. On implementation issues, no significant progress has been reported, while some issues are discussed under TRIPS.

F. Other issues

51. Discussions intensified on the three TRIPS issues of the multilateral system of geographical indications notification and registration for wines and spirits, extension of stronger geographical indications protection for all products, and the relationship between TRIPS and the Convention on Biological Diversity, with the latter two being also "implementation" issues. In the context of the mini-ministerial meeting, proponents have called for "parallelism" for the three issues, for initiation of negotiations for the geographical indications extension and for an inclusion in the TRIPS Agreement of a mandatory requirement for the disclosure of origin of biological resources and/or associated traditional knowledge in patent applications. Little progress was made as differences persisted among countries, including as to whether these issues form part of a single undertaking and how to ensure parallelism. TRIPS issues are of particular relevance to the Millennium

Development Goals and the fight against poverty, as they affect the economic well-being of local communities and farmers, as well as environmental sustainability.

52. On rules on anti-dumping and subsidies, including fishery subsidies, particularly controversial has been "zeroing" — a method of calculating the dumping margin that many participants feel tends to inflate the margins. Positions differ between major users of anti-dumping measures (importers) and exporting countries targeted by such measures. On fishery subsidies, various subsidies are proposed for prohibition, including capacity-enhancing subsidies, operating cost subsidies (including fuels), infrastructure subsidies, income and price support, access rights transfer and subsidies for illegal, unreported and unregulated fishing. Matters exempted generally from the prohibition include capacity-reducing subsidies, such as decommissioning of vessels. Least developed countries are generally exempted from the prohibition. Developing countries are entitled to certain subsidies, including for artisanal fishery and small-scale fishing vessels. Certain special and differential treatment provisions are conditioned upon the adoption of a fishery management system.

53. Developing countries continue to seek, under trade facilitation negotiations, an implementation mechanism that would link implementation capacity, the provision of capacity-building support and the timing and level at which developing countries would enter into commitments. A group of developing and developed countries has proposed an implementation mechanism whereby developing countries would categorize commitments for immediate implementation, implementation subject to pre-determined transition periods and implementation subject to the provision of capacity-building support and capacity acquisition. Also debated are negative and positive list scheduling and "best endeavour" commitments. These require careful consideration to cater for the limited implementation capacities of developing countries.

54. Effective implementation of the Aid for Trade initiative, with adequate funding, remains a key concern for developing countries. Following global and regional reviews conducted in 2007, the 2008 Aid for Trade road map emphasizes moving the process to action, through increased developing country ownership, monitoring and implementation. Following a successful pledging conference in 2007, the Enhanced Integrated Framework is not yet fully operational. Substantial additional, predictable and non-debt-creating resources remains a key concern of developing countries.

IV. Evolution in regional trade arrangements

55. Regional trade arrangements continued to proliferate worldwide. By 2007, 385 regional trade arrangements had been notified to the World Trade Organization, 197 of which were in force. The recent proliferation is largely attributable to bilateral agreements. The United States of America has intensified its bilateral approach under the Trade Promotion Authority 2002 and concluded 11 regional trade arrangements, including with the Republic of Korea, with which it has its largest free trade agreement after the North American Free Trade Agreement. The new European Union strategy has redirected its attention to non-traditional partners in Asia and Latin America. Recent regional trade arrangements have intensified their behind-the-border coverage — including competition, investment and government

procurement, which have been dropped from the Doha Round — while leaving unaddressed other issues of systemic implications, such as agricultural subsidies. Increased involvement of developing countries in regional trade arrangements implies a greater relevance of the development dimension of such arrangements, including regulatory and institutional cooperation and development assistance.

56. Six African, Caribbean and Pacific regions and the European Union had been negotiating economic partnership agreements that would serve as instruments for sustainable development, poverty eradication and regional integration. This year, 2008, is the first year since the expiration of a World Trade Organization waiver authorizing the European Union's Cotonou preferences, and has seen the conclusion of full and interim economic partnership agreements. Thirty-five African, Caribbean and Pacific countries initialled agreements, including one full economic partnership agreement by the Caribbean region. Interim economic partnership agreements normally provide progressive liberalization of about 80 per cent of imports and products over 15 to 25 years in African, Caribbean and Pacific States. This largely reflects the parties' interpretation of the "substantially all the trade" requirement of the General Agreement on Tariffs and Trade, article XXIV, governing regional trade arrangements, while there is no agreed definition of the term. The African, Caribbean and Pacific Group of States has long called for reforming the parameters of that article to allow a lesser degree of market opening over longer periods. A third-party most favoured nation clause under an economic partnership agreement has raised concern over its possible dissuasive effects for South-South regional trade arrangements. In the World Trade Organization Brazil has questioned its compatibility with the spirit of the enabling clause.

57. Full economic partnership agreements are to be negotiated for most regions in 2008 and 2009. This timeline, together with the complexity of issues, highlights capacity constraints, particularly of African countries. Full economic partnership agreements would provide for comprehensive coverage, encompassing services, e-commerce, investment, competition, government procurement, intellectual property rights and personal data protection. The services provisions are likely to entail deeper commitments, including liberalization of investment in non-services sectors. Turning existing bilateral and subregional interim economic partnership agreements into full regional agreements in a manner that genuinely promotes regional integration processes would be a major challenge.

V. Conclusion

58. Halfway to the 2015 target for achieving Millennium Development Goals, current global economic realities — financial, food, fuel and energy crises, climate change and migration — pose challenges for the development prospects of developing countries. The international trading system can make an important contribution by addressing such global challenges affecting real economies and human needs, although it alone cannot solve the deep-rooted and multifaceted problems. The multilateral trading system continues to be the cornerstone of global trade governance. The trading system, however, must operate within a broader system of global economic governance. Greater coherence across different layers and systems of global economic governance — at the national, regional and global levels, as well as encompassing trade, aid, finance, investment, employment and technology — is thus essential.

59. Efforts must be deployed to ensure that the multilateral trading system continues to be upheld and to bring the Doha Round to a successful conclusion with development-oriented balanced outcomes. Immediate consequences of the delayed conclusion of the Round could be the greater recourse to trade litigation and the intensification of bilateral and regional trade agreements, which risk further fragmentation of the international trading system. As provided in the Accra Accord, it is essential that all World Trade Organization members uphold and reiterate their commitment within the organization to promote a well-functioning, rules-based, open, equitable, predictable and non-discriminatory multilateral trading system that promotes development. Efforts should also be deployed to re-engage in the negotiations and deliver the development promise of the Round.

60. Careful reflection might be warranted on the definition of the negotiating agenda, as well as on the ways and means in which the multilateral trading system manages a complex, broad-based agenda of negotiations under a single undertaking in an inclusive and transparent manner with its diverse membership of 153. The emergence of the dynamic South also calls for an adaptation of mindsets, policies and approaches in the trading system. A number of developing countries have emerged as key global players in production and trade. Such an evolution has significantly altered the dynamics of the trading system. For instance, developing countries with market power now have significant leverage in negotiations and become assertive when they relate to sensitive poverty and livelihood issues. The built-in agenda of the Uruguay Round consisted primarily in agriculture and services, while the Doha mandate incorporated a broader package, including non-agricultural market access, Singapore issues and other subjects. Although expected to facilitate intersectoral trade-offs, the larger agenda proved to be unmanageable, and three Singapore issues were dropped from the round in 2004. The broadened agenda resulted in diverting attention from the core issues, particularly agriculture, while the expected intersectoral trade-offs proved to be difficult on issues of particular importance to countries.

61. The promise of the Doha development agenda requires that the development objectives and aspiration are given greater prominence over narrower, short-sighted mercantilist considerations, and that the specific situations and concerns of a diverse membership receive adequate systemic responses and considerations. The principle of special and differential treatment is essential in all aspects of market access and rule-making negotiations. On the other hand, it has become increasingly challenging to balance diverse, sometimes mutually competing, interests of members, including within developed countries and developing countries. Such augmentation of diversity adds further complexity to the overall calculation of balance.

62. International trade continues to be a powerful engine of growth and development. The majority of developing countries have not fully benefited from such growth, owing to insufficient productive supply capacities and competitiveness, lack of supportive infrastructure and enabling policy environment and market access and entry barriers on their exports in agriculture, manufactured goods and services. The United Nations system, including UNCTAD (through its three pillars, intergovernmental consensus-building, research and analysis, and capacity-building and technical cooperation), continues to support developing countries in addressing such challenges and benefiting from increased trading opportunities. Aid for trade and aid for development are key components of such support.

63. Ensuring the beneficial participation of developing countries in the international trading system is a critical challenge that must be addressed if globalization is to be a positive force for all with its benefits shared equitably. As underlined in the Accra Accord (para. 45), "maximizing the benefits and minimizing the costs of international trade liberalization calls for mutually supportive and coherent policies and governance at all levels". It is critical in this regard that the Doha Round be brought to a successful conclusion. As outlined in the Accra Accord, there is a need to secure increased and effective market access and entry for developing country exports; to implement fairer rules; to strengthen the development orientation of North-South, South-South and regional trade and cooperation arrangements; to mobilize the potential of the services trade and services economy for development; and to strengthen trade and productive capacity in developing countries.